TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~349.~~

THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, THE LA CROSSE AND MINNESOTA STEAM PACKET COMPANY, CLAIMANT AND RESPONDENT, AND LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANT, APPELLANTS,

vs.

HOME INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED DECEMBER 11, 1868.

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1 Circuit Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the Circuit Court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of September, A D. 1867. Present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Cassius Fairchild, marshal; Edward Kurtz, clerk.

Among other the following proceedings were had, to wit:

HOME INSURANCE COMPANY, libellant,
vs.
THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, The La Cross and Minnesota Steam Packet Company, claimant, and Lewis J. Higby and David Ferguson, stipulators. } Appeal in admiralty.

Be it remembered that heretofore, to wit, on the fourteenth day of March, A. D. 1867, a certified copy of record in said cause in the District Court of the United States for the district of Wisconsin was received from the clerk of said court and filed in the clerk's office of this court, as follows, to wit:

2 District Court of the United States of America for the District of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the District Court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the tenth day) of September, A. D. 1866. Present the Honorable Andrew G. Miller, judge of said court, presiding; Cassius Fairchild, marshal; John M. Miller, clerk.

Among other the following proceedings were had, to wit:

HOME INSURANCE COMPANY
vs.
THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, The La Cross and Minnesota Steam Packet Company, claimant. } In admiralty.

Be it remembered that heretofore, to wit, on the seventeenth day of July, A. D. 1865, came the said libellant by its proctors, Messrs. Emmons and Van Dyke, and presented to the court its libel against the steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and the barge Pat Brady, as follows:

Libel.—In admiralty.

To the judge of the District Court of the United States for the district of Wisconsin:

The Home Insurance Company of New York exhibits this its libel against the steamboat called the Keokuk, whereof J. H. Moulton now is or lately was master, her boilers, engines, machinery,
3 boats, tackle, apparel and furniture, and barge Pat Brady, in a cause of contract civil and maritime. And thereupon the said libellant doth allege and articulately propound as follows, to wit:

First. That the libellant is a body corporate and politic created by the laws of the State of New York, and empowered amongst other things to do and transact a general lake and inland insurance business, and make assurance upon vessels and their cargoes upon the lakes and rivers.

Second. That said steamboat and barge now lying at La Crosse, in the district aforesaid, are respectively of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose were employed in the business of commerce and navigation between ports and places in different States of the United States upon the Mississippi river, a river navigable from the sea.

Third. That on or about the 12th day of May, 1865, the said steamboat, with said barge in tow, whereof the said Moulton was master, and then lying at Hastings, in the State of Minnesota, the said
4 boat and barge then belonged to and was then in the employ of the La Crosse and St. Paul Packet Company; the said steamboat with said barge in tow was then designed on a voyage upon the Mississippi river aforesaid to La Crosse, in the State of Wisconsin, and within the admiralty and maritime jurisdiction of this honorable court, John Robson being the owner of 5,000 bushels of No. 1 wheat, of the value of five thousand dollars, shipped on board of said steamboat and barge in good order and condition, to be carried and transported in and by said steamer and barge from Hastings aforesaid to La Crosse, in the State of Wisconsin, and there to be delivered in like good order and condition for the said John Robson, the unavoidable dangers of the river and fire only excepted; that the said wheat so shipped on board said steamer and barge was consigned to Angus Smith & Co., of Milwaukee, in said district, by the way of La Crosse aforesaid; that said wheat was to be so carried and conveyed and delivered in consideration of certain freight to be paid by the said John Robson upon the actual and complete delivery of the said wheat to his said consignees, the said John Robson receiving from the said master a bill of lading, receipt and contract, a copy of which is hereto annexed and thereby made a part thereof.

Fourth. That the libellant did make assurance upon said cargo the 5,000 bushels of wheat aforesaid, and did underwrite a policy thereon for and at the rate of one dollar per bushel.

Fifth. That the said steamboat and barge departed from Hastings aforesaid on her voyage aforesaid laden with said cargo of wheat on

or about the 12th day of May, 1865, but the said master as aforesaid, though not prevented by the unavoidable dangers of the river or fire, did not safely carry and transport the said wheat and deliver
5 the same in like good order and condition, but, on the contrary thereof, by reason of the unseaworthyness of the said steamboat and barge and the decayed condition of said barge and its utter insufficiency to carry safely wheat in bulk, and by reason of the unskillfulness and mismanagement and carelessness of the said master, and the neglect of his mariners and servants under him, the said barge was sunk in the Mississippi river and the said wheat was wetted and greatly damaged and wholly lost.

Sixth. That by reason of the wrong of the said master and the loss resulting thereform to said wheat, the libellant was compelled to pay and did, on or about the 25th day of May, 1865, pay to the said John Robson, the party so insured as aforesaid, the sum of four thousand six hundred dollars, ($4,600,) in the lawful currency of the United States.

Seventh. That by reason of the premises the libellant is subrogated to all the rights and interests and rights of action of the owner of said wheat in said bill of lading mentioned, and by the libellants insured as aforesaid.

Eighth. That all and singular the premises are true. Wherefore the libellant prays that process in due form of law may issue against the said steamboat Keokuk, her engine, boiler, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, and that this honorable court will pronounce for its aforesaid demand and decree, the same to be paid with interest, from the 25th day of May, 1865, besides costs, and for such other relief in the premises as to right and justice may appertain.

HOME INSURANCE COMPANY,
By EMMONS & VAN DYKE, *Proctors.*

DISTRICT OF WISCONSIN, *ss*:

Henry S. Durand, of Racine, in said district, being duly
6 sworn, says: That he is one of the agents of the libellants in the foregoing libel named, and is familiar with the facts therein narrated, and he verily believes said libel to be true.

HENRY S. DURAND.

Subscribed and sworn to before me this 17th day of July, 1865.
J. M. MILLER, *Clerk.*

HASTINGS, MINN., *May 12th*, 1865.

Shipped in good order and condition by John Robson, for account of himself, on board the steamer Keokuk, whereof Moulton is master, the following articles as here marked and described, to be delivered in like good order and condition, as addressed on the margin, (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 34c. per bus. to Milwaukee. Freight and charges to be paid as noted below, upon the actual and complete

delivery of the said goods and freight to said consignees or their assigns.

Privilege lighting, towing and reshipping.

In witness whereof, the owner or clerk of said boat hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the other to stand void.

Marks.	Articles.	Weight.

Bulk, bark Pat Brady, containing 5,000 bushels of wheat, more or less, to Angus Smith & Co., Milwaukee via La Crosse.

HALL, *Cl'k.*

And same day, (July 17, 1865,) said libellant filed its stipulation for the payment of costs, as follows:

7 District Court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by Home Insurance Company, against steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or its surety execution may issue against their goods, chattels and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and he is, bound in the sum of two hundred and fifty dollars; conditioned that the libellant above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the Appellate Court.

HOME INSURANCE CO.,
By H. S. DURAND, *Spec'l Ag't.*
WM. T. BONNIWELL.

Taken and acknowledged this 17th day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

Wm. T. Bonniwell, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

WM. T. BONNIWELL.

Sworn to this 17th day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner.

8 *Order for process, &c.*

Whereupon it is ordered by the court that a monition issue to the marshal returnable on the seventeenth day of August next, at eleven o'clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof.

And it is further ordered that notice be given by advertisement in the , a daily paper printed in the city of and by notices posted in the most public manner at and near the place of trial for at least six days.

Whereupon a monition issued as follows:

9 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the District Court of the United States for the district of Wisconsin, on the seventeeth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by Home Insurance Company against steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel; that they be and appear before the said court, to be held in and for the district of Wisconsin, on the seventeenth day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district. this seventeenth day July, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

[SEAL.]

J. M. MILLER, *Clerk.*
EMMONS & VANDYKE,
Proctors for Libellant.

[50-c. stamp.]

10 *Return to monition.*

Monition returned: "In obedience to the within precept I have this 26th day of July, A. D. 1865, attached the steamboat Keokuk, her boiler, engines, machinery, boats, tackle, apparel and furniture, at La Crosse, and have given due notice to all persons claiming the same that this court will on the seventeenth day of August, A. D. 1865, at eleven o'clock in the forenoon of that day, should the same be day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim shall be interposed for the same and they make their allegations in that behalf.

"Fees $14 30.

"D. C. JACKSON, *Marshal.*
"By W. S. JACKSON, *Deputy.*"

Claimant's stipulation.

JULY 26, 1865.

This day came the La Crosse Packet Company, as claimant of said steamboat Keokuk, her engines, &c., and barge Pat Brady, and presented its stipulation with David Ferguson and Lewis J. Higby, as sureties in the sum of nine thousand two hundred dollars, that it will abide and answer the decree of this court in this cause.

And said claimant's stipulation is as follows:

11 District Court of the United States for the district of Wisconsin, in admiralty.

Whereas a libel was filed on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by Home Insurance Company against steamboat Keokuk, her boats, &c., and barge Pat Brady, for the reasons and causes in the said libel mentioned; and whereas the said steamboat Keokuk and barge Pat Brady are in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court.

Appearing personally La Crosse Packet Company as the claimant of the said steamboat Keokuk and barge Pat Brady, and produced for sureties Lewis J. Higby and David Ferguson, and the said Lewis

J. Higby and David Ferguson, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors and administrators, in the sum of five thousand six hundred dollars unto the said Home Insurance Company, that the said La Crosse Packet Company, Lewis J. Higby and David Ferguson, shall abide and answer the decree of the said court in the aforesaid cause, and unless they shall so do they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

L. J. HIGBY.
D. FERGUSON.

Taken and acknowledged this 26th day of July, 1865, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss*:

Lewis J. Higby, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of nine thousand two hundred dollars over and above all his just debts and liabilities.

L. J. HIGBY.

Sworn to this 26th day of July, 1865, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

12 *Order for warrant of restitution.*

Whereupon it is ordered by the court that a warrant of restitution be issued to restore the said steamboat Keokuk, her engines, &c., and barge Pat Brady, to the said claimant.

Warrant of restitution issued as follows:

13 DISTRICT OF WISCONSIN, *ss*:

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the District Court of the United States for the district of Wisconsin, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, by Home Insurance Company, against steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, praying that the same may be condemned as forfeited to the said libellant; and whereas the said steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, has been attached by the process of the said court, in pursuance of the prayer of the libel, and is now in your custody, in virtue of said process; and whereas also a claim has been interposed and filed in said court by the La Crosse Packet Company, and such proceedings have been thereupon had that by the sentence and decree of said court in this cause, made and pronounced

on the 26th day of July, eighteen hundred and sixty-five, the said steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, was adjudged to belong as claimed, and was ordered to be restored to the said claimant: Therefore you, the said marshal, are hereby commanded to release the said steamboat Keokuk, her boilers, engines, machinery, boats, tackle, apparel and furniture, and barge Pat Brady, from arrest, and to deliver and return the same unto the said La Crosse Packet Company.

And what you have done in the premises do you make return thereof before the said Court of Admiralty on the seventeenth day of August next, at eleven o'clock in the forenoon of said day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 26th day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of these United States the ninetieth.

[SEAL.] J. M. MILLER, *Clerk.*

14 *Return to warrant.*

Warrant of restitution returned: "In obedience to the within warrant of restitution, I have this 26th day of July, A. D. 1865, released the steamboat Keokuk, her boiler, engine, boats, tackle, apparel and furniture, from arrest, as commanded.

"Fees $16 50.

"D. C. JACKSON, *Marshal,*
"By W. S. JACKSON, *Deputy.*"

Answer.

SEPTEMBER 14, 1865.

This day came the claimant, the La Crosse and Minnesota Steam Packet Company, by John W. Cary, its proctor, and filed its answer as follows:

In Admiralty.

To the judge of the District Court of the United States for the district of Wisconsin:

The answer of the La Crosse and Minnesota Steam Packet Company, owner and claimant of the steamboat Keokuk and barge Pat Brady, to the libel of the Home Insurance Company, against the said steamboat and barge.

15 And now comes the La Crosse and Minnesota Steam Packet Company, owner of the said steamboat Keokuk and barge Pat Brady, and for answer to the libel of the Home Insurance Company against the said steamboat and barge, doth allege and propound as follows, to wit:

First. That the said La Crosse and Minnesota Steam Packet Company is a corporation duly created and organized under and by virtue of the laws of the State of Wisconsin, and is the true and bona fide owner of the steamboat Keokuk and barge Pat Brady, and that no other person or corporation is the owner thereof.

Second. That the first article of said libel is true, as this respondent is informed and believes.

Third. That the second article of said libel is true.

Fourth. That the third article of said libel is substantially true, except the statement that said wheat was of the value of five thousand dollars, and except also as to the ownership and employment of said steamboat Keokuk and barge Pat Brady; and as to the value of said wheat, the respondent has no knowledge or information sufficient to form a belief; and as to the ownership and employment of said steamboat and barge, the respondent says that they were owned and in the employ of this respondent.

Fifth. That the fourth article of said libel is true, as this respondent is informed and believes.

Sixth. That it is not true "that the said master, though not prevented by the unavoidable dangers of the river, did not safely carry and transfer the said wheat and deliver the same in like good order and condition, but on the contrary thereof, by reason of the unseaworthiness of the said steamboat and barge, and the decayed condition of said barge and its utter insufficiency to carry safely wheat in bulk, and by reason of the unskillfulness and mismanagement and carelessness of the said master, and the neglect of his mariners and servants under him, the said barge was sunk in the Mississippi river, and the said wheat was wetted and greatly damaged and wholly lost," as in the fifth article of said libel is untruly alleged and
16 pleaded; for the truth and fact was and is, and the respondent doth allege and propound, that the said steamboat Keokuk did, on the 12th day of May, A. D. 1865, depart from the port of St. Paul, bound on a trip to La Crosse, Wisconsin, laden with a cargo of flour, and did, at the port of Hastings, take in tow the barge Pat Brady, laden with five thousand bushels of wheat in bulk; that the said barge was then tight, staunch and strong, and well and duly equipped and officered, and in all respects fit to perform her said intended trip, and that said steamboat and barge were then, and both and each of them in all respects seaworthy and in good repair and condition, and that said steamboat and barge proceeded on said trip without accident, until about eleven o'clock of the afternoon of said 12th day of May, A. D. 1865, when said steamboat and barge, while prosecuting her said trip and being in her proper place and channel in the Mississippi river, and her officers and crew being in their respective proper places, and attending to their proper duties, and when near the head of a place known as Buffalo Slough, near a place known and called Minneska, and said steamboat and barge being then and there skilfully, carefully and properly navigated and managed, the said barge did strike a hidden, concealed and unknown snag in said river, causing said barge to spring a leak

so as to cause her to sink within the space of thirty minutes in four feet of water in said river, whereby said wheat laden in said barge, or a portion thereof, became wet and damaged, and thereby the respondent was prevented from delivering said wheat at La Crosse by the unavoidable dangers of the river, and not by the carelessness or unskillfullness of the master and mariners of said steamboat, or by the unseaworthiness or insufficiency of said steamboat or barge; that this respondent used every exertion in its power to raise and save said wheat, and preserve it from loss and destruction, and in
17 and about that business this respondent was put to great labor, and incurred heavy expenses and costs, and in that behalf and in and about that business paid the several amounts, and rendered the services following, to wit:

Paid C. L. Brown for 46 days' board of men	$69 00
J. Smith for ferrying	2 00
H. S. Semmerman for baskets and pails	3 00
Men for labor in water 86 days, at $5 per day	430 00
For use of rigging	50 00
For services of steamboat Favorite 3 days	450 00
Labor by Favorite	6 40
Amounting to the sum of	$1,010 40

And that the freight earned in carrying said cargo of wheat before the sinking of said barge, taking a pro rata amount of the contract price for the whole distance, amounted to the sum of three hundred and eight 50-100; that this respondent succeeded in saving a large portion of said five thousand bushels of wheat, but in a wet and damaged condition, and after so saving the same, proceeded therewith in tow of this respondent's steamer Northern Belle, for La Crosse, and that when this respondent arrived at Winona, in the State of Minnesota, with said wheat, the agent of the Home Insurance Company of New York, in which company the said John Robson had insured said wheat, came on board of said steamer, and demanded that said wheat so saved from the said barge Pat. Brady, and then and there of the value of fifteen hundred dollars and over, should be delivered to said Home Insurance Company at Winona, and in pursuance of said demand said wheat was then and there by this respondent delivered to and accepted by said Home Insurance Company, without the payment of said freight or wrecking charges; that the whole amount of freight and wrecking charges due this respondent on account of said cargo of wheat amounts to the sum of thirteen hundred and eighteen 90-100 dollars, no part of which was paid to this respondent by said libellant or said John Robson.

Seventh. That it is not true that any loss resulted to the
18 libelant from the wrong of said master, as in the sixth article of said libel is untruly alleged and pleaded; that the truth and fact is that said loss resulted from the unavoidable dangers of river navigation, as hereinbefore stated; and this respondent admits

on information and belief that said libellant did pay to said John Robson the sum of $4,600, as stated in the sixth article of said libel.

Eighth. That this respondent has no knowledge as to whether the libellant is subrogated to all the rights and interests of the owner of said wheat, as alleged and pleaded in the seventh article of said libel.

Ninth. That all and singular the premises are true. Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in cost, and otherwise right and justice to administer in the premises.

[SEAL.] WM. RHODES,
Sec'y Lax & Minn., S. P'kt Co.
JOHN W. CARY, *Proctor.*

DISTRICT OF WISCONSIN, *ss*:

Be it remembered that on the eleventh day of September, A. D. 1865 personally came before me William Rhodes, and made oath that he is one of the offices of the La Crosse and Minnesota Steam Packet Company, the respondent named in the foregoing answer, to wit, its secretary; that he has read said answer, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

SAM'L S BURTON,
County Judge La Crosse Co., Wis.

9 District Court of the United S. for the district of Wisconsin

Libellant's testimony.

HOME INSURANCE COMPANY
vs.
STEAMER KEOKUK & BARGE PAT BRADY, LA CROSSE AND MINN. STEAM P'K'T CO. claimant. } In admiralty.

Depositions of witnesses taken by consent before me, John M. Miller, clerk and com'r U. S. District Court, Wisconsin, at Winona, Minnesota. Present: John H. Van Dyke, libellant's proctor, and Jno. W. Cary & Wm. Hull, respondent's proctors:

Deposition of Jno. Robson.

John Robson, witness for libellant, being sworn, deposed and said:

I am the same John Robson examined in the case of myself against the s'boat Keokuk and barge Farley. I shipped on board the Brady, appurtenant to the s'boat Keokuk, the wheat in the bill of lading mentioned, and there was actually shipped 5,000 bushels. It was No. 1 wheat, and the value is in the bill, and was worth $1 00 per bushel; shipped in good condition, to be carried and conveyed as stated in the bill of lading. That cargo of wheat was sunk; was insured in Home Ins. Co.; nearly a total loss; little saved. Have to

refer to bills to state; think the salvage was $400 the whole, the full value of what was saved.

Quest. Was this the same barge Pat Brady you were examined in gard to, in a suit pending in the same court, wherein you are libelant, and against s'boat Northern Belle and barge Brady?

Ans. Identical Pat Brady. I think she was a pretty poor barge. I think she might carry part of a load of wheat in bulk; if she was my barge, I would not dare to carry any ones wheat in her. A barge of her size should carry 5,000 bushels; that is what she holds; that is what I mean by a full load for the Brady. It would be unsafe to put that on her now, or at that time.

20 *Cross-examined.*

Quest. Do you adopt your answers in the cross-examination relative to the seaworthiness of the Pat Brady, in the case of John Robson against the steamer Northern Belle and barge Pat Brady, pending in this court. as your answer in this cause?

Ans. Certainly.

Re-examined.

The Home Insurance Co. paid me the loss and damage to the wheat, making am't paid me $4,600.

Cross-examined.

This $4,600 is the total am't of loss, the amount I settled at; the agent of Ins. Co. here sold the wheat saved, and got the money.

JNO. ROBSON.

Subscribed and sworn to before me, May 21st, A. D. 1866.

J. M. MILLER, *Com'r, &c.*

Stipulation.

It is hereby stipulated by the proctors for libelant and respondent, that the depositions of the witnesses, Hugh B. Callahan, David D. Poley, and Charles L. Rider, taken under the foregoing title, be used in this case, and also in the case of John Robson against the steamboat Northern Belle and barge Pat. Brady, pending in the same court, with the like force as if taken and reduced to writing in each case.

Deposition of Callahan.

Hugh B. Callahan, witness for libelant, being sworn, deposed and said:

My name is Hugh B. Callahan; my age is about 48 years; resides in La Crosse, Wisconsin; occupation, house carpenter and joiner. In that business 25 years or more. Have never worked in a ship yard. Have seen barge P. Brady. Saw her laying on the ways at North La Crosse, in the boat company's yard, on or about 19th June last, (1865;) think that was about the date, not quite positive. Messrs.

Durand, Rider and Poleys were with me at the time. The barge lay on the ways, the knuckle planks were off; that left the
21 floor timbers, upright and side timbers so that they were exposed. In making the examination I think there was 90 odd timbers rotted and gone, so much so that they were not strong enough to make a fastening to; there was one place on the starboard side of the vessel that there were four side timbers rotted out; that left about 5 feet without support at that one place. Her floor timber ends were very much decayed. Floor timbers 3x5, I think, perhaps 2½x5. Her top frames or side timbers were 2½x4½.

Quest. How were her side timbers and floor timbers lapped together and fastened?

Ans. Think they were laid right on each other and spiked; no knuckle laps on; no support of any kind.

Quest. Was that barge, in the decayed condition in which you found her timbers, fit to carry wheat in bulk? If not, why not? State fully.

Ans. The frame of the barge was so much decayed that it was unsafe to carry freight of any kind.

Quest. From the condition in which you found her timbers and frame, how long in your judgment had she been in the same or nearly the same condition?

Ans. I think she must have been in that condition for about 2 years.

Quest. How old in your judgment was that barge, and upon what do you form your judgment?

Ans. From the decayed condition of the barge, I she must have been from 10 to 12 years old.

Quest. With the timbers and fastenings of the barge as you found them, if a barge had had 4,000 or 5,000 bushels of bulk wheat in her, and she had touched bottom, what would be the effect on her seams?

Ans. It would burst them, because there was not sufficient strength of timber to hold her together

Ques. In the examination of that barge and her timbers, did you discover where any new splices or any overhauling of her timbers had been made? If yea, what, and how was it done.

22 Ans. The pieces were laid in against the side plank to spike the ends of the new plank fast; those pieces were oak; the other timbers of the barge were oak; these new pieces were spiked on to the frame, for the purpose of getting nailing to nail the plank on to the barge. I found from 35 to 40 pieces put in on both sides of the barge; this was necessary from the fact that the timbers in the frame of the barge, and the spikes that held on the plank had left their hold; the pieces that were put in were all new pieces, and had not been put in longer than 2 or 3 months.

Quest. With that barge in that condition when you examined her, would you judge that she then was, or had been for six months previous, had been seaworthy and in condition to carry wheat in bulk; and if not, why not?

Ans. She was to much decayed to carry wheat in bulk then, and for a year previously, in my opinion.

Quest. How would the effect of her being so much decayed effect the carrying wheat in bulk safely?

Ans. Her timbers would give away and her seams open. Wheat is an article that settles and shifts about, which has the effect of opening seams by the timbers straining; the buts could not stand it well, for there was not timber to hold them secure; they would open.

Cross-examined.

I have had some experience in transporting wheat in barges. I had an interest in a cargo of wheat going from Racine to Buffalo, and the vessel sunk, and I, with all the others interested, lost my interest. I have not otherwise handled or shipped a great deal of grain or wheat.

There were a number of men lolling around the shipyard when I was there; I did not see Capt. Davidson, or Thayer, or Winell, or Stevens, and I saw no one there that I knew, except the ones with me; I was there making the examination from one hour to 1½ hours, and may be 2 hours; two hours, I guess. I think there was another
23 barge on the ways at that time; she might have been 5 or 6 feet away from the barge we examined; I think they were side by side; I think the one we examined lay the furthest into the river; further west. This was on Sunday; I think it was the 19th of June, but am not positive; I do know it was Sunday, but it might have been the 20th or 21st day of the month.

Re-examined.

I saw a name on this barge; it was painted on her sides, above the main deck, on the cargo box, in black letters; the name was Pat Brady.

H. B. CALAHAN.

Subscribed and sworn to before me May 22d, 1866.

J. M. MILLER,
Com'r Wisconsin Dist.

Deposition of D. D. Poleys.

David P. Poleys, witness for libelant, being sworn, deposed and said: My age is 42; reside in La Crosse, Wisconsin; occupation is carpenter and joiner; never worked at barge or boat building. Have seen barge Pat Brady at North La Crosse, in the company's yard, on the ways. It was in June, 1865; I think it was on the 23d or 24th June, on Sunday; Messrs. Callahan and Rider and Mr. Durand were with me; went there to examine the barge Pat Brady, at request of Mr. Durand; we examined her; examined her for about two hours; she was upon the ways, and her plank was off where the bottom and side timbers join together; I could see plainly her side and bottom timbers; we found them rotten and in decayed condition; her side

timbers were some of them rotted partly off and some entirely rotted off; I think on the west side of her we found in the neighborhood of fifty rotted; there were 15 or 20 rotted off entirely; on the east side, I think, there were about the same number rotted, and about 10 or 15, I think, rotted off on the east side; on the east side, near the bow, found 4 or 5 rotted off in one place; don't think there was any support in the place where they were rotted off. Found the
24 floor timber ends rotten; a number of them; don't remember whether any of them were entirely rotted off or not.

Quest. How were her floor and side timbers joined together and fastened?

Ans. I noticed some of her side timbers where it came down on the floor timbers; the side timbers would be gained up ½ or ¾ inch and bolted on to the boat, joined together by one bolt; saw but one.

Quest. What support had the floor timbers and side timbers where they joined?

Ans. Not anything but the bolt I saw; I should not think that, from the condition that she was in, that she was seaworthy, from the rotten condition of her timbers. In some places there were pieces nailed on to the side timbers to nail the planks to. There was nothing there to keep the buts or plank from springing off. In case of a strain upon the barge afloat with cargo on board of her these buts or plank would open and let the water into her.

Quest. In the condition of that barge's timbers, with a cargo on board of her of about 4.000 or 5,000 bushels of bulk wheat on board, in case of a heavy wind or rough sea, how would she act?

Ans. A heavy wind, I think, would strain her and open her joints. In case another vessel came against her sides it would stave them in, I think; if she was running from 3 to 4 miles an hour, a collision with another vessel would break her in.

Quest. In case she was so loaded, how much side pressure (in the condition of her timbers) as you have described, would be required to open her seams without breaking her in?

Ans. It would take but very little pressure. According to my judgment she was not a seaworthy barge, on account of the rotten condition of her timbers; don't think she was a tight, staunch barge. In my judgment I should not think she was less than ten years
25 old; should rather think she was built longer than that; from the condition in which I found that barge, I do not think she was perceptibly better two months previously than she was when I examined her.

Cross-examined.

I have had no experience as boat or barge carpenter; have never been on a barge under way, nor have never had charge of one. No person present when I made this examination, except Messrs. Durand, Callahan and Rider. I have stated this was the 23d or 24th of June. None of the dock yard men were at work; don't remember seeing any men around. Do not know the name of the barge that

lay alongside of the Pat Brady. I knew it was the Pat Brady by the name on the cargo box. The one we examined lay the west side, nearest the water.

Re-examined.

Some fifteen or seventeen years ago I worked in a ship yard for about six months, since which time I have been a carpenter and joiner.

DAVID D. POLLEYS.

Subscribed and sworn to before me May 22d, 1866.

J. W. MILLER,
Com'r Dist. Wis.

Deposition of C. L. Rider.

Charles L. Rider, called for libellant, being sworn, deposed and said: My residence is La Crosse, Wisconsin; my age is 40 years; my present occupation is, I am employed by the Home Insurance Company as inspector of barges; have had experience in vessel building, not boat or barge building.

Quest. Do you know the barge Pat Brady, which, in the spring of 1865, was in the service of the La Crosse and Minne. Steam P'k't Co.? If yea, how well do you know her?

Ans. I know her; have made a pretty good examination of the barge; I know her from any other barge of that company.

26 Quest. Do you know what barge the witnesses Callahan and Polleys examined in the month of June last, when on the ways at North La Crosse, when they, Henry S. Durand and yourself, were present?

Ans. Yes, sir; it was the barge Pat Brady; there is no other barge of that name employed in the upper Mississippi. I knew of no other barge employed by this company in the spring and summer of 1865, by that name; there was no other barge of that name ran to La Crosse during that time that I know of. I saw her last the last of last week at the boat yard at North La Crosse.

Quest. Do you know whether the P. Brady was repaired after the time you saw her on the ways, with the other witnesses, in June last? If yea, how extensive were these repairs?

Ans. She must have been repaired, or she could not have been launched; I don't know how extensive the repairs were; I have no personal knowledge of the repairs. It must have been about the 23d or 24th of June that I examined her, with the witnesses Callahan and Poleys, and Mr. Durand; it was on Sunday; I inspected her again about the commencement of this month; somewheres about that time; it may have been the last of last month; I could then see a portion of her timbers; she was afloat. I examined for the classification of barges for the insurance company. She was classed No. 2. No. 2 means in the classification, according to my instructions; was a barge

suitable to carry oats and barley or bulky freight, but not wheat in bulk.

The classification, according to my instructions, was as follows:

No. 1 was to be a good barge, suitable to carry wheat in bulk.

No. 2 was to be a barge suitable to carry oats or barley.

No. 3 was to be a barge suitable to carry bulky freight, such as farming tools and such things.

As far as I could examine her, she seemed to be worthy of
27 classing No. 2; she was better in appearance and condition than when I examined her in June last.

Quest. Did you examine this spring and classify the barge Farley of said company; if yea, in what class was she placed, and why so classed?

Ans. She was classed No. 3, because she had every appearance and condition of her timber to be quite an old barge, and not of suitable strength to carry wheat, or oats, or barley. In my judgment she was from 10 to 12 years of age, and she might be older; in my judgment I think the P. Brady was about 10 years old; I should take her to be over 10 years of age; I suppose I am employed as inspector by the board of underwriters; don't know how many companies are represented by the board of underwriters.

Cross-examined.

Mr. Durand wrote the letter here for me to start as inspector; I was informed that I was acting, or was to act from my instructions; I was not in the business before I received this letter.

Quest. How and by whom were you appointed?

Ans. This letter that I got was sent to Mr. Montague here for him to see me and have me start at once, commencing at Prairie du Chien, Dubuque, Savannah, Fulton, inspecting all the barges at these places, and classing them into three classes, providing that I could class them into three classes except from disability of the barges. Mr. Montague sent for me to come to his office to see me on that matter; he showed me the letter and arranged with me to go and do as the letter said; that is my notice that I started on; I can't really say that was my appointment or not; nothing further than the conversation I had with Mr. Durand here about ten days ago; am still in the business. All the instructions I received was contained in that letter, so far as the classification of the barges was concerned; I have not a copy of that letter, but have a copy of a portion of it; I have not the letter myself, but think I could furnish a copy;

it was a letter from Mr. Durand to Mr. Montague; I can't tell
28 the date, but think it was last of last month, about the 1st of April.

Quest. When you examined the Brady and classed her as No. 2, how much of her timbers could you see or examine?

Ans. I had a chance to see both ends of her inside, from the inside of both stems; I could see in the neighborhood of nine feet; I mean from the inside of the stems or ends; could not see any of her

side or bottom timbers, only those we could see from the end; did not see any of her knuckles; the cargo box is what there is above her main deck; the timbers that I could see of her were old. In June, 1865, the 23d or 24th of June, on Sunday, Wm. Callahan, Mr. Poleys, and Mr. Durand were with me when I examined her then; nobody else there that I know of; I do not know that Capt. Humphreys, of Milwaukee, examined her, or that he was here, to my knowledge; I did not see Mr. Durand after that Sunday afternoon; may have seen him Monday morning after that, but do not recollect; some of the timbers of the Brady, when I examined her this spring; were rotten—the points of her keelson; I could not really say what other timbers, to name them, were partially decayed, but I am satisfied in regard to the keelsons; this rot that I have mentioned would tend to weaken the barge; it was some where about the middle of April that I inspected her.

Re-examined.

Mr. Montague is agent of the Home Ins. Co., and a number of others I cannot name.

Quest. You spoke of having inspected barges at Prairie du Chien and below; what other barges on the river came under your inspection?

Ans. There were barges at Fulton; all the barges running here and below, whether belonging to companies or private individuals.

Quest. In the inspection of the Brady this spring you speak of seeing the points of her keelson; do you know of her having any keelsons in her except points of keelsons?

29 Ans. Do not know that she had any keelsons in her except points.

Quest. Will you procure a copy of the letter referred to under which you received your appointment of inspector, also a copy of the instructions under which you acted as inspector, and furnish the same to the commissioner, to be annexed to your deposition, and to be marked by the commissioner exhibits "A" and "B," and will you procure the same to be certified as copies by Mr. Montague, the agent here?

(The respective counsel here assent that they be so certified.)

Ans. I will do the best I can do.

Quest. Does schedule "C" embrace a list of the barges inspected by you and classed as inspected, with the exceptions of the errors in printing? if yea, mark what such errors are on the schedule.

Ans. Yes, sir; it does, and I will correct the errors in classification made in printing.

Quest. What is the reason the barge Victor is not classed on the list?

Ans. She was sunk before I inspected her.

C. L. RIDER.

Subscribed and sworn to before me May 22d, 1866.

J. M. MILLER,
Clerk and Com'r, Wisconsin.

Exhibit "A."

WINONA, MINN., *May* 12, 1865.

Shipped in good order and condition by John Robson, for account himself, on board the steamer Keokuk, whereof Moulton is master, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, (the unavoidable dangers of river and fire only excepted,) or to his or their assignees, at the rate of 24 c. per bus. to Milwaukee. Freight and charges to be paid as noted below, upon the actual and complete delivery of the said goods and freight to said consignees or their assigns. Privilege of lighting, towing, and reshipping.

30 In witness whereof the owner or clerk of said boat hath affirmed to 4 bills of lading all of this tenor and date, one of which being accomplished, the other to stand void.

Marks.	Articles.	Weight

Bulk, barge Pat Brady, containing 5,000 bushels wheat, more or less, to Angus Smith & Co., Milwaukee, via Pra. du Chien.

HALL, *Clerk.*

[2-ct. stamp.]

Schedule "B."

Home Insurance Company of New York, Ohio and Indiana; cash capital $2,000,000.

CHICAGO, ILL., *March 30th*, 1866.

G. R. Montague, esq., agt., La Crosse:

D'R SIR: We want to get an inspection and classification of all the barges on the river, between St. Paul and Fulton, before they start out on spring business. To do this thoroughly we want an experienced and reliable man, one who understands how a barge should be built in order to carry bulk wheat safely. Such a man, in my opinion, is Mr. H. L. Rider, of your city, and we must have his services for a couple of weeks. We want him to go first down to Prairie du Chien, thence to Dubuque, Savannah, and Fulton, carefully examine every barge, noting in a book her age, name, length, beam, specification, and everything else necessary to form a correct opinion of her capacity for the service. We propose to make three classes, No. 1, No. 2, and No. 3. No. 1 must be capably in all respects to carry bulk wheat safely. No. 2 should be a good barge and fit to carry barley, oats, merchandise, &c. No. 3 should be fit to carry

31 farming implements, wagons and other kinds of bulky and light property. We would like the names of the owners as

far as possible. This must be done without delay, and we hope Mr. Rider can be employed to start at once. One man will start at St. Paul and work down to and include La Crosse. If he gets down to La Crosse before Mr. Rider gets back, he will wait until his return, and then they will set down together, look over their notations, make out a list, and classify each barge, name, where built, length, beam, capacity, No., or class. We intend this shall lay the foundation for a full inspection, registration and classification of all the barges engaged in the trade on the upper rivers. When we get the barges on the Missi. river inspected we can then go ahead and get the tributary barges inspected. Also add all new barges as they are built. We will pay Mr. R. liberally, and you will please advance him money for his expenses, and charge it to the Home. Mr. Rider will say to owner of barges that he is in the interest of all the companies belonging to the board of underwriters, and that no barges or their cargoes will be insured until inspected.

Please say to Mr. R. to be thorough and independent. Have him report to [to] you on his return, and I will have our St. Paul man also to report to you when he reaches La Crosse, so that they can meet at once and finish up their list, &c. I hope you will let your man assist them in making out their list and classification, as we are depending on Mr. R. services, and as there is no time to lose, he must not disappoint us.

Please write me if all is going on and will have prompt action.

Truly yours,

H. S. DURAND,
Sp'l Agent.

LA CROSSE, WIS., *July 9th*, 1866.

To whom it may concern :

This is to certify that I, Giles R. Montague, received the within letter on the 5th or 6th day of April, A. D. 1866.

GILES R. MONTAGUE.

32 Subscribed and sworn to before me this 9th day of July, A. D. 1866.

THEODORE B. EDWARDS,
Notary Public, La Crosse County, Wisconsin.

[Not. stamp.]

33 SCHEDULE "C." 1866

Inspection and classification of river barges, as adopted by the board of river underwriters.

SAVANNAH PACKET COMPANY.

Name.	Length.	Breadth.	Depth.	Capacity in bushels.	Owners.	Last surv.	Class.
Grouse	124	20	4		Savannah Packet Co		1
Woodcock	128	20	6		" "		1
Pulver	125	21	4		" "		1
Mallard	125	21	3		" "		1
Teal	124	20	4		" "		1
Widgeon	124	20	4		" "		1
Bass	128	20	3		" "		1
Salmon	124	20	4		" "		1
Trout	125	20	4		" "		1
A	61	16	3		" "		1
B	60	16	3		" "		1
C	90	15	4		" "		1

NORTHWESTERN PACKET COMPANY.

Jim Sheets	136	18	5				3
C. C. Mather	132	18	5				3
C. A. Offin	135	18	4				3
Sam Cook	133	17	4	4500			2
Smelter	118	15	4	4500			2
N. F. Webb	141	22	3½	7000			1
W. H. Gabbert				6000			2
John Lawler	130	20	6½	9000			1
W. H. Lawton	150	20	6½	8500			1
Mist	140	22	4½	8000			1
Spray	140	22	4½	8000			1
Duke	155	26	7	18000			1
Dutchess	155	26	7	18000			1
Frank Lewis	140	22	6½	14000			1
W. G. Wood	140	22	6½	14000			1
J. N. Conger				10000			1
Fleming				10000			1
C. H. McArthur	113½	18	3½	4000			2
Lansing				4000			
A. Mitchell	131½	18	3½	3500	Northwestern Packet Company.		3
Jack Haskill				2500			3
Ed Sawyer	152½	22½	6	15000			1
P. D. Hosford	152½	22½	6	15000			1
Bill Ewing							3
Professor Ellis							3
Winona							3
Galena							3
Dan Hewett	155	24	6	16000			1
Addie	140	22	4½	8000			1
Fannie	140	22	4½	8000			1
Frank	140	22	4½	8000			1
Vone	140	22	4½	8000			1
Mattie	140	22	4½	8000			1
Nannie	140	22	4¼	8000			1
Rose	89	18	4	2000			1
N. G. Cooley	144	25	5½	16000			1
Lilly	86	17½	4½	2000			3

Schedule C—Continued.

LA CROSSE PACKET COMPANY.

Name.	Length.	Breadth.	Depth.	Capacity in bushels.	Owners.	Last surv.	Class.
John Lucky	133	26	4	9000	La Crosse Packet Company.	------	1
Farley	102	14½	4½	3000		------	2
Norway	131	18½	3½	4000		------	2
Betty Wilson	102	15½	4½	2500		------	2
Jack Frost	126	18½	3½	3500		------	2
Eureka	141	22	4	8000		------	1
H. T. Rumsey	139	25	5½	10000		------	1
Mattie Cramer	153	24	6½	14000		------	1
Tom Wilson	125	13½	3	22000		------	2
Pat Brady	126	18½	3	4500		------	2
Hastings	127	18	5½	6000		------	1
Lucy	130	20	4½	5000		------	2
D. A. Thayer	137	25½	6½	10000		------	1
Charley Miller	130	19½	4	4500		------	1
P. S. Davidson	158½	26½	6½	17000		------	1
						Sunk.	
Addie	142½	22½	4½	9000		------	1
Idaho	142½	22	4½	9000		------	1
						Sunk.	
Ned	136	21½	6	10000		------	1
J. G. Greer	131½	24½	4½	7500		------	1
Cartwright	150	24	4½	10000		------	1
Roanoke	151	25	5	10000		------	1
Eureka	130½	25	5	9000		------	1
	104	17	4	4000		Sunk.	1
Chaska	137	26½	5½	14000		------	1
James Newton	154	26½	5½	14000		------	1
Lormor	149	24	4	13000		------	1

JOHN LAWLER.

Hudson Porter	110	18½	5½	5500	John Lawler.	------	1
Geo. L Bass	110	18½	5½	5500	" "	------	1
Col. Gilbert	118	19	6	5500	" "	------	1
L. Wiley	150	25	5	------		------	

CHASE & MILLER.

Tug Ella	79	14	4½	------	Chase & Miller.	------	1
No. 1	100	16	5½	------	" "	------	1
No. 2	100	16	5½	------	" "	------	1
							1
							1

Schedule G—Continued.

HENRY GRAHAM.

Name.	Length.	Breadth.	Depth.	Capacity in bushels.	Owners.	Last surv	Class.
Emma	80	14	3½				2

CHARLES MURRAY.

Dubuque	140	24	6½	10000	Charles Murray.		1
Dunleith	140	24	6½	10000	" "		1
C. J. Caffery	132	20	5	6000	" "		1
Robert Rogers	153	26	5		" "		1
Madison	163	26	4		" "		1
Judea	153	26	5		" "		1

MURRAY COMPANY.

Gen. Sheridan	131	20	4	6500	Murray Co.		1
Gen. Sherman	131	20	4	6500	" "		1
Gen. Grant	131	20	4	6500	Charles Murray		1
Asa	143	19⅓	4½	6500	" "		1

H. T. RUMSEY.

Kate	87	15	3½	2500	H. T. Rumsey.		1
Nattie	79	10	3				3
Federal Union.	115	13	3	3000	"		1
Morning Star	105	16	5	4000	"		1
Elbert	92	14	3	2000			2

ST. CROIX STEAMBOAT COMPANY.

Bobby	75	14	3½	2000			1
Oceola	100	18	4	3000			1
A. C. Weaver	147	21	4½				1

35 District Court of the United States for the district of Wisconsin.

Deposition of H. S. Durand.

HOME INS. COMPANY
vs.
STEAMER KEOKUK AND BARGE PAT BRADY, La Crosse and Minne. Steam P'k't Co., claimants. } In admiralty.

Deposition of witness for libellant, taken by consent, before me, J. M. Miller, clerk U. S. District Court and U. S. commissioner, Wisconsin, at the city of Milwaukee, Wisconsin, on this 6th day of July, A. D. 1866. Present: John H. Van Dyke, esq'r, proctor for libellant, and John W. Carey, esq., proctor for respondent.

Henry S. Durand, witness for libellant, being sworn, deposed and said: I am the special agent of the Home Ins. Co. for Wisconsin and Minnesota; the Home Ins. Co. insured the wheat ladened on board the barge Pat Brady, mentioned in the libel in this case, and paid the loss and damage thereon. The damage to the wheat, over and above the loss, amounted to $4,600 00. The insurance co. insured on the cargo $5,000 00. John Robson had the salvage, amounting to about $400 00. The co. settled with him, paying him $4,600 00 over and above the salvage he received.

HENRY S. DURAND.

Subscribed and sworn to before me, July 6th, A. D. 1866.
J. M. MILLER,
U. S. Com'r, Wis.

District Court of the United States for the district of Wisconsin.

HOME INSURANCE CO.
vs.
STEAMBOAT KEOKUK AND BARGE PAT BRADY, La Crosse and Minnesota Steam Packet Co., claimant. } In admiralty.

Deposition of witnesses taken by consent, before me, J. M. Miller, clerk U. S. Dist. Court and U. S. commissioner, Wisconsin, at the city of Milwaukee, Wisconsin, on this sixth day of July, A.
36 D. 1866. Present: John H. Van Dyke, esq'r., proctor for libellant, and John W. Cary, esq'r, proctor for respondent.

Deposition of Jasper Humphrey.

Jasper Humphrey, witness for libellant, being duly sworn, deposed and said:

My age is fifty-four years, and my residence is Milwaukee; resided in Milwaukee since winter of 1846–'47; my occupation since my residence here has been sailing principally; my present occupation is inspector of the board of lake underwriters. I have sailed for 30 or 40 years; first took command of a vessel in 1836; sometimes have sailed on the lakes, and some portion of the time on the sea. I have seen barge Pat Brady, that is if the name painted on the barge is evidence of its name. I saw her on the 27th June, 1865, about four o'clock in the morning, at upper or east La Crosse, situated on Black river; she was hauled out on the repairing ways for repairs; the lower outside plank were off; could see her floor ends and the timbers all the way up; in fact there was no ceiling, excepting that part covering the knuckle, and those boards were about two feet long. On the port side we found 13 frames badly decayed, and 10 so much decayed that they were detached, completely rotted off. On the starboard side there were 38 badly decayed and 20 gone entirely. This vessel was about 120 feet long, 16 feet beam, and about four feet depth of hold. I have no other means of knowing she was the Pat Brady, excepting that the name was painted on the side. There were places where three of her frames were rotted off altogether, making a space of about five feet. The frames and floor timbers were simply lapped, and one bolt through, and where they were rotted off was where they were lapped and bolted. There was no other support where these frames were rotted off, except only the 1½
37 inch plank and the boards I have spoken of inside. The effect would be for the cargo to crowd the plank out and the pressure of water to hold it in when loaded, unless she touched something.

Quest. What do you mean by touching something, and what would be the effect?

Ans. I don't know how they tow barges, but going against docks or touching the ground upon making a turn or towing barges astern, on their touching would have the effect of opening the seams at the knuckles and letting the water in. If the barge was towed alongside resting on fenders, it would have the effect of opening the seams. I think the barge Brady was a poor, weak concern the best day she ever saw.

Quest. How old should you judge her to be?

(Objected to as incompetent, as the witness has shown no means of knowledge by which he is able to judge.)

Ans. I should think may be a dozen years or so old, she may have been rebuilt; it is a hard question to answer.

Quest. Will you state whether that barge, from the construction, timbers and fastenings, was fit to carry wheat in bulk in her best days; and if not, why not?

(Objected to as incompetent, immaterial, and the witness has no knowledge of the business sufficient to entitle him to give an opinion.)

Ans. I should reject that boat the best days she ever saw to carry wheat in bulk.

(Answer objected to as not responsive and evasive.)

Because she was weak in her bilges, from the fact of her floors and top frames being lapped as they were. The insufficiency of the plank outside to give support, no timbers inside running fore and aft, which should be in my opinion. In my opinion there should be knees in the bilges, crooks to run out on the floor and up the sides.

Quest. In the condition you found her timbers, what have you to say as to her sufficiency to carry wheat in bulk?

(Objection same as above.)

Ans. I think she was not a proper boat to carry anything of
38 a perishable nature, in the condition in which her frames were in. So many frames being gone in one place would leave her without proper support.

Quest. In the condition her timbers were in when you saw her, if she had been loaded and touched bottom, what would have been the effect?

(Same objection as above.)

Ans. If she would touch where she did not bear on the bottom evenly, she would be very likely to open in her bilges. A steamer's fenders against her sides would probably make her leak.

Quest. What was there in the condition and build of that barge to enable her to resist the pressure of a steamer's fenders upon being towed alongside, in case the barge touched anything?

Ans. If she touched anything it would cause her seams to open, or a swell in the river that would make her pound against the steamer would make her leak by the opening of the seams at the bilge. There was nothing in her construction that would enable her to resist a [a] pressure on her side, and I was almost afraid that the pressue of the wheat would cause her to leak, unless she was lying quiet at the dock. I should think she was unseaworthy in her then condition. According to our rates on the lakes she would rate the lowest grade, because she was originally built weak, and from the condition of her timbers she could not carry anything that would not sink.

Quest. From the decayed condition in which you found her timbers, within what period prior thereto could she have been in a more seaworthy condition?

Ans. Don't think she was much better a year previous.

Cross-examined.

Mr. Thomas Davidson and Mr. Marshall were with me when I made the examination at La Crosse. I went there at the telegraph of Mr. Durand. I left here June 26th, and made this examination on June 27th, 1865.

Quest. Have you made an affidavit on this subject prior to
39 this date?

Ans. Not unless the paper in Mr. Van Dyke's hands is an affidavit.

(Witness looks at the paper and says it is an affidavit.)

Quest. Did you swear in that affidavit that that examination took place on the 27th day of May?

(Objected to as immaterial.)

Ans. I think I did; from the fact of her name being painted on the side is the only means I have of knowing that she was the Pat Brady. The name was painted on the raised part of the vessel fore and aft, on the upper part of the deck. The name was painted lengthwise of the vessel, on the side. I don't recollect that it was painted on more than one side of the vessel at one place on the vessel. She had no grain box that I saw.

Quest. If she had been loaded with grain when you saw her, would the grain have come in contact with her timbers and outside planking, except where the pine board, about two feet long, spanned the hypothenuse of the angle of the knuckles?

Ans. Nothing that I saw to prevent it; her floor was ceiled over with an inside floor, but no ceiling on the side, except this pine board at the knuckles. I did not discover anything to indicate that there ever had been any such grain box or ceiling. I got her length by stepping, pacing her off; her beam also by pacing; but think I got her depth by measuring; made her length about 120 feet; breadth, 16 feet, and depth four feet. This depth does not include the rise of the deck, only to the main deck. The workmen were at work putting in new timbers. I don't recollect seeing any new frames in her, except what they were putting in her at that time. Recollect seeing some timbers that were comparatively sound. I think those frames were from 20 to 24 inches apart; can't say positively; have not had any experience on the Mississippi river with a river steamer or barge. I am not a ship carpenter; have not had any experience in navigating vessels, excepting those built for ocean or lake
40 trade. I never particularly examined any barge, excepting at this time; never particularly noticed their construction or build before. At this time I examined all the barges there and they were planked, running fore and aft. I don't remember seeing any that had knees in the sides, as I had not access to them, as they were ceiled up.

Quest. Is it usual or customary to build barges on the Mississippi with knees in the sides?

Ans. I have no way of judging, except what I saw at this time; the bow of a barge is the end that goes foremost when towing.

Quest. Was there any difference in the two ends of this barge, as examined by you; did it not go one end foremost as well as the other?

Ans. They have no rudders and go one way as well as the other; they are made to tow alongside. There is a little coop-house in one end, which I would call the after end. Received my appointment from the chairman of the board of underwriters. The chairman is Capt. Dobbins, of Buffalo; Lawrence Webber, secretary.

Quest. Could this barge which you examined been thoroughly repaired in 1864, and new timbers put in, either to replace, or alongside of all such timbers as were rotten or decayed?

Ans. Don't think there were new frames put alongside all the rotten ones in 1864; there might have been some new ones put in her, but I do not think the frames could have decayed so much in one year, sound timbers could not have decayed so much in that time; some of these timbers were so decayed that I could put my hand between the laps, rotted away like dirt. I noticed on one side three frames altogether, where there was not a particle of support to the frames; this was nearly midships. I found ten on one side so completely gone that there was no support, and on the other side found twenty in the same condition; they were so completely gone that there was no connection, and you could dig them out like dirt; was ex-
41 amining her for about three hours; got there about 4 o'clock, and examined her until about 7 o'clock; this was before the men came to work in the morning; there were no new timbers alongside of these timbers that I have particularly mentioned. I suppose the object of going there so early was to be out of the way of the men at the yard before the barge becamed thronged with men.

Re-examined.

Quest. Does the affidavit mentioned state the date of the examination of the barge correctly, in saying that it was on the 27th May?

Ans. No, it was the 27th June. Made the affidavit the next day after I got home.

JASPER HUMPHREY.

Subscribed and sworn to before me this 6th day of July, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

Deposition of Thos. Davidson.

Thomas Davidson, witness for libelant, being duly sworn, deposed and said:

I am 38 years old; occupation, ship-builder; residence, Milwaukee; been a ship-builder for about 20 years; I am a master builder; I have built mostly sailing vessels, both large and small, and some scows and steamers, and have built small boats for vessels. A knee gives the most strength to vessels, more than when the timbers lap together; the knee has four or five times' the strength greater than the other mode of construction; where timbers are fastened by mere lapping, and part where they are bolted together, there is nothing to keep the sides and bottom together, but when built with a knee, with the natural bend, both sides and bottom are fastened to the knew, which gives additional strength. I saw the barge P. Brady at La Crosse on the 27th June, 1865. She was hauled out on the ways; she was not a good barge to stand much sea, or the surge of a steamboat; she was decayed in the bilges, and she was weak from her original construction; she was weak by her not having

42 knees, or corner pieces; found good many frames decayed and some gone altogether; on one side found 10 frames gone altogether and 13 decayed; on other side 38 partly decayed, and 20 gone altogether. The surging against a steamboat would likely make her leak at any time; there was nothing in her build, except her deck timbers, that reached whole way accross, to prevent her leaking from any lateral pressure. She would likely open her seams if she was loaded and touched her sides against anything; by pressure of the water, or surging against a steamboat, or getting aground, would cause the oakum to start out of her seams and cause her to leak; from the working or springing of the barge it would cause the oakum to come out; this is because she was weak; the timbers were like so much manure; you could pull them out with your hand; were gone altogether; she was, perhaps, fit to carry lumber or wood in her then condition; she could carry anything else that would not be damaged by wetting; she was not fit to carry anything else; part of these timbers must have been gone for a year or 18 months; she might have been 10 or 12 years old.

Cross-examined.

I saw her name painted on her side, and being called to inspect her by Mr. Marshall, is the only knowledge that I have that she is the Pat Brady; was there with Capt. Humphrey; went to La Crosse to survey her; was called upon by Mr. Helfenstein, with an order from Mr. Durand to go there for that purpose; was paid by Mr. Durand; have had some experience in building river craft in Scotland, but not in this country; have been master builder in Milwaukee for 5 years; have worked here for eleven years, and previously was in Scotland; have never examined any Mississippi river craft, except when I was over there at this time.

Quest. Do you know whether this barge was built in the
43 usual manner and style of building barges on the Mississippi river?

Ans. She was not built as well as some that I saw there, there were 6 or 8 others there at that time, and she was the poorest one; there was another hauled out alongside of her, and she was stripped; there was still another, a third, hauled out, and she was not stripped; the other barges I examined had in three corner pieces, which support the knuckles; there were 2 or 3 others there built in that way; have no knowledge of navigating the Mississippi; was only there that one time.

(The two foregoing depositions taken in the above-entitled case, by consent of the respective proctors herein, and in a case pending in the same court, wherein John Robson is libelant, and the s'boat Northern Belle and barge Pat Brady were libeled, are to be used in both of said cases with like effect as if taken and filed in each.)

THOS. DAVIDSON.

Subscribed and sworn to before me, July 6, A. D. 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

District Court of the United States.

Respondent's testimony.—Deposition of James Gooding.

THE HOME INSURANCE COMPANY
against
THE STEAMBOAT KEOKUK & BARGE PAT BRADY, the La Crosse & Minnesota Steam Packet Company, respondents and claimants. } In admiralty.

The deposition of James Godding, taken before me, George Cogswell, a notary public, by consent of the respective parties by their proctors, Emmons & Van Dyke, on behalf of the libellant, and John W. Cary on behalf of the respondents, being present and consenting that the deposition be so taken, to be used on the hearing of the above entitled-cause:

James Goodin being first by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the matter of
44 difference in the above-entitled cause, did testify as follows:

My age is forty-four and upwards; I reside at Paul, State of Minnesota; have been on the Upper Mississippi river for three years last past; I was second mate on the Keokuk in 1864 and 1865, up to September, and since then have been mate of another boat; and in 1865, was in the employ of the La Crosse & Minnesota Steam Packet Company, and now in the employ of its successor; was acquainted with the barge Pat. Brady in 1864 and 1865; we towed her most constantly in 1864; had towed her previously to May 12, 1865; I mean by we, the steamer Keokuk; we were carrying wheat in her in bulk; think we carried one load of iron in her going up; I never knew a thing derogatory of her condition; had allways preferred her trips, requiring less pumping than many others; I considered her a staunch barge; she would carry 5,000 to 5,500 bushels, think she has been loaded to amount of six thousand bushels; her tonnage was about 5,500 bushels; I have loaded her a good many times; I was on board of her on the night of the 12th of May, 1865; made fast to her at Hastings; she was on the starboard and the barge Jack Frost on the larboard; I was on watch when the injury happened to her; was sitting on the deck of the barge, when, at the foot of Buffalo Slue, near Minneska, she struck on her starboard quarter on something solid, I should think somewhere about 30 feet from her bow; I spring to the stern; she then had six inches of water in her; when I got there I tried her; I told the deck hand to try the middle well; he reported four inches of water there; I had examined five minutes before and she had no water; had towed from Hastings about a 100 miles; she had not made any water during that time; after calling the captain took pumps from the steamer; put five pumps on her; called all hands and put them all at work; when she struck there was no bar to run her on; we kept on with her to Minneska;
45 she then had nearly a foot of water in her; we then run her

on the bar; I staid with her with eight men and the pumps; it was then ½ past 11 or 12 o'clock, night; worked all night as tight as we could at the pumps to keep her from sinking, at daylight went across to Minneska and sent telegraph to Captain Davidson that if he would send me a barge I thought I could save some dry wheat; he sent me a barge; it got there 10 or 11 o'clock a. m.; the 13th I got extra men from Minneska to pump; I got out about 800 bushels that was dry; put it into the barge; also put into the other end of the barge some that was partially wet; some was carried accross to Minneska by direction of the insurance agent from Wynona; he came up on the Northern Belle; the rest of the wheat was thrown overboard.

Quest. Did you do all you could to save the cargo after the injury, and did you save all that could be saved?

Ans. I think there was, and I think all was done that could be done.

Cross-examined.

Quest. Did you see the bottom of the barge after she was taken out?

Ans. I did not.

Quest. Do you know whether there was any injury done to her flooring or her timbers?

Ans. I do not.

Quest. Did you ever see the timbers in the body of Pat Brady, with her planking off?

Ans. Did not.

Quest. How often had you pumped the Pat Brady from the time you left Hastings until she commenced making water rapidly?

Ans. My impression is she had been pumped very little in coming through the lake; when there is a swell on, barges make more or less water; I don't recollect whether there was a swell on that night or not.

Quest. What injury was done to the Pat. Brady when she struck, as you have stated?

46 Ans. I am not able to say, as I did not see her when she was taken out.

Quest. What is the distance from the place she commenced making water so rapidly, to the bar upon which you ran her?

Ans. One and a half to two miles I should think; kept right along with her till we got to the bar.

Quest. What is the breadth of the channel at the point where she commenced making water so rapid?

Ans. I think not more than 7 or 8 rods; cannot say exactly.

Quest. What was the depth of water where she commenced making water so rapidly?

Ans. Don't know what the depth is there; but when we slid off further in the channel should think there was 25 to 30 feet. The concussion when they struck caused them to slide off. The whole

breadth of the river at that particular point I should think 20 to 25 rods. Out of the channel it is shoal water.

Quest. You state that there was about 800 bushels of dry wheat saved; have you any idea of what the am't was, with any accuracy?

Ans. I could not tell with any accuracy; it is only a guess; have no means of knowing except I took it out in baskets; had 15 or 16 men carrying it out.

Direct.

Quest. At the time the barge struck, did you try the water in the stern before or after the deck hand had tried it in the centre by your direction.

Ans. I told him to try at midships and run right along back; when a vessel is moving rapidly and making water she will show it most in her stern well.

Cross-examined.

Quest. When you reported the fact to the master of the Keokuk, did he stop her headway or keep right along?

Ans. He partially stopped for a mere moment, then went on slowly, about 7 or eight miles an hour, making about half
47 speed; she usually runs 13 or 14 miles an hour.

Quest. What was the steamer doing so far to the starboard side of the channel?

Ans. That I can't tell you. The pilot would have to answer that; it was not a great way from where we usually ran.

Quest. Was there plenty of water in the channel, where you usually ran?

Ans. There was plenty of water. It was rather a dark night; there was no moon; a usual night without a moon. In the night, as you turn following the channel, facing the high head-lands covered with evergreens, it shades the water a long shade, sets back on the river, and it is difficult for the best pilot to tell the channel closely there.

Quest. At what speed were you going at the time of the accident, that is just before the accident?

Ans. About 13 miles an hour.

JAMES GOODING.

Subscribed and sworn to before me May 24th, 1866.

GEO. COGSWELL,
Notary Public in and for the State of Wisconsin, residing at Milwaukee County.

District Court of the United States for the district of Wisconsin.

HOME INSURANCE COMPANY
vs.
STEAMBOAT KEOKUK & BARGE PAT BRADY, La Crosse and Minnesota Steam Packet Co., claimant. } In admiralty.

Depositions of witnesses taken by consent before me, J. M. Miller, clerk and U. S. commissioner, dist. of Wisconsin, at the city of La Crosse, Wisconsin on this fifteenth day of May, A. D. 1866.

Present, John H. Van Dyke, esqr., proctor for libelant, and John W. Cary, and Wm. Hull, proctors for respondents.

Deposition of I. H. Moulton.

Isaac H. Moulton, witness for claimant, being sworn, deposeth and said:

I was in the employ of the La Crosse & Minn. Packet Co. as captain, on the 12th of May, 1865, and in same employ, prior and
48 subsequent to that time. The s.-boat Keokuk was employed by this company at that time. On the 12th day of May, left St. Paul at our regular time, and at Hastings, 30 miles below St. Paul, took in tow the barge Pat Brady, loaded with 5,000 bushels of wheat, according to the bills of lading. She appeared to be evenly loaded and in good order. I had instructed watchman to watch her close, as I do all barges, and he reported every few minutes that she was dry and in good order. I ran on in that way until 11 o'clock p. m. seven or eight hours from time I took her in tow. We were in what we call good river, when I left the deck and went into the cabin; had been in cabin but few minutes, when the watchman came in and told me that the barge has struck something, and was making water.

(Libellants' proctor objects to the statements of watchman given in evidence.)

I went out, and found she was making water rapidly. Two of my deck hands, who were sitting on deck of barge, upon being asked said that they felt her strike something very seriously.

(The foregoing answer objected to for the reason last aforesaid.)

I called all hands, put pumps to work quick as possible, and found the water was gaining all pumps and all work. I had probably about 3 or 4 miles to get to Minneska. When I got there, water had gained very much on us, and finding I could not save her, ran her on to a sand bar; left 8 men on her, went ashore at Minneska to take out protest, and could find no one to transact the business. Went on to Fountain City, the next town, where I had protest made.

(Protest offered in evidence, and recognized by witness; marked exhibit 1st. (Objected to by libelants for reason that it is inadmissable on evidence on the part of respondents.)

W. G. Telfer, the clerk who signed the protest has gone to Mon-

tana. Nichols, the pilot, has gone to Leavenworth. The next day, a barge was taken to her; the day after, I took a barge to her.

49 I reported the circumstance on arriving at La Crosse. I saw part of the cargo put out into the barge taken there. I was in the vicinity of the barge next day after, and took utensils, baskets, etc., for her unloading.

Quest. State whether sufficient help was left on barge to take care of her, and what directions were given relative to the saving of the cargo?

(Objected to as incompetent.)

Ans. I left 8 men, the best men that I had on board, with the barge, with instructions to them to work the pumps, and do all in their power to save cargo, and I would send help as soon as possible. I ran the barge as hard as possible on the sand bar to prevent her sinking more than necessary. The watchman in charge of barge, at time of the accident, was James Gooding. He is now mate of s.-boat on Minnesota River. Don't recollect names of deck hands; do not know family names of any of them. Accident occured at Buffalo Slough. I consider that the boat was in the regular channel at time of accident; commenced navigating this portion of Miss'i river in spring of 1864, and been here ever since; think I understand navigating steamboats on this river.

Quest. Was the barge, at this time, properly and skilfully manned and handled.

(Objected to as leading and incompetent.)

Ans. I think it was in all respects. The Keokuk is a side wheel, passenger steamer, in good condition, and manned with one capt., 2 pilots, 1 mate, 4 engineers and 2 strikers, 1 deck watchman, 1 cabin watchman, 24 deck hands, is the average number, sometimes more or less; never less than twenty men and a full cabin crew for a boat of her size. It was an ample crew in all respects. She is considered a remarkably good tow-boat, one of the best on the river. Was supplied with good lines, head line, tow line, stern line, backing line, and breast line, This is all required on our boats. We usually lay our barge about one-quarter of her length ahead of the bows of the steamboat. We put barges on the most convenient side for our landing, if but one.

50 What is the custom on river in towing barges ladened with bulk wheat, relative to watching and examining with respect to the leaking of the barge.

(Objected to as incompetent and inadmissable.)

Ans. My instructions to my watchman are to try the pumps every 10 or 15 minutes, and take every care that they are dry and not making water, and if any thing unusual occurs, to let me know. In going through the lake, the waves come up between s.-boat and barge. There are at least four places for pump, and barges usually carry two pumps. Instructions to watchmen in this case were as above. I was acquainted prior and subsequent to 12th of May with the barge Pat Brady, and have towed her since. I considered her staunch and strong, and every way capable to perform that trip at

that time. I think the cargo was suitable to her capacity, was not overloaded; has carried same amount many times. She was loaded with bulk wheat properly ladened; was on even keel, as I thought, when we took her. I consider that this barge Pat Brady was in suitable condition for carrying wheat in bulk at that time. I do not know what caused the injury further than I have stated. Capt. Dan Thayer was sent, I think, by the s.-boat Co. to assist the men I left with the barge. I ran barge on sand bar in about 30 minutes after accident, as near as I can tell, about that time.

Cross-examined.

I had no other barge in tow at that time.

Quest. Did you ever have any practical experience in the building of barges?

Ans. I have not.

Quest. Have you any knowledge of ship building?

Ans. No, sir.

Quest. Did you ever see the Pat Brady with her lower planks off?

Ans. No, sir.

51 Quest. Did you ever see her frames or floor timbers?

Ans. No, sir; don't know size of her floor timbers; don't know size of her top frames; don't know how her frames or floor timbers are fastened; don't know that there any knuckles or fastenings, nor what supports her fastenings; do not know where she was built, nor when she was built; have know her since 1864; do not know how old she is; don't know were she was brought from, whether she was built at La Crosse or not. Never knew her by any other name than the Brady.

Quest. What personal knowledge have you that the Brady met with any accident on that trip further than she made water, or the information received from others?

Ans. Have the information that I had towed her 100 miles on that trip without leaking, and had towed her about 25 mile without making a landing, and that no more than fifteen minutes before that the watchman had reported her not making any water and all right.

Quest. Same question repeated.

Ans. Have no personal knowledge except as stated in last answer.

Quest. Were either W. G. Telfer, the clerk, or G. G. Nichols, the pilot, on board the Pat Brady at time of accident?

Ans. No, sir; they were on the Keokuk.

Qust. Is it not understood and known here that the Pat Brady is a barge from 12 to 18 years old?

Ans. Have no knowledge on the subject, never heard anythink about her age.

Quest. If you know nothing of the manner in which this barge is put together, how can you testify as to seaworthiness and capacity of carrying wheat in bulk.

Ans. I knew by seeing her towed by other steamboats; towed her

with my own steamboat; seeing her loaded and unloaded, and constantly in the wheat and freight business.

Quest. Do you know of her being towed by the Northern Belle, on the 19th of June, 1865.

Ans. Saw s.-boat Northern Belle and 3 barges on Prescott Bar.

52 I towed down the Lucy and Jack Frost, leaning the Pat Brady on the bar.

Quest. Were the cargoes of the Lucy or Jack Frost injured by getting on the bar?

Ans. No, sir.

Quest. How was it with the Pat Brady?

Ans. Don't know, sir; had nothing to do with her.

Quest. Is it unusual when the river is low for barges to get aground on the bars.

Ans. No, sir.

Quest. Is wheat in bulk more trying on barges than other cargoes?

Ans. If properly ladened, I don't think it is.

Quest. Should not a barge be sufficiently strong when getting on a bar to sustain herself and keep her cargo from water?

(Objected to by respondent as incompetent.)

Ans. A hard question to answer. Yes, as a usual thing, she ought to be strong enough to sustain herself and preserve her cargo. Witness state that the force of going on to a bar will strain a knuckle and getting a barge off a bar oftentimes; there is a great strain on one end of the barge. You can't pullstraight off as she went on the bar; have to work them off sideways. The best barge in the world might be strained in working them off.

Quest. Is it unusual to get barges off bars, as you have stated?

Ans. No, sir.

Ques. Why was it on the occasion of the 19th of June, that you took the Lucy and Jack Frost in tow, and left the Brady?

Ans. The Brady was aground. I understood the other two were not. I took them in tow to allow the other boat to connect.

Quest. Capt., don't you know the fact that the Brady was on the bar with water in her?

Ans. No, sir.

Quest. Why do you have to keep your pumps going every 15 minutes, or why do you try the pumps so often?

Ans. To see if they are leaking.

Quest. What is the necessity if they are staunch?

Ans. To prevent labor and weight. A barge will sink

53 very rapidly after making a foot of water. The Pat Brady is the first barge I ever sunk, and only one I ever sunk.

Quest. How nearly will 5,000 bushels of wheat fill the hold of the Pat Brady?

Ans. It fills her to her deck nearly.

Quest. Can you get on board the Pat Brady a cargo of general merchandize of the same weight of 5,000 bushels of wheat in bulk.

Ans. It would be a difficult matter.

Re-examined.

Quest. Is the Pat. Brady now in use as a barge for carrying wheat in bulk, and has she been ever since May 12th, 1865?

Ans. Yes, sir, except when in ship-yard for repairs.

Quest. What amount of wheat has she been carrying at a load since that time?

Ans. From 4 to 5,000 bushels. Have frequently towed her since that time, a number of times.

Quest. To your knowledge; since May 12, 1865, has she had any accident except the one on the 19th of June?

Ans. Don't know of her having any trouble since that time. In 1864, she was in constant use. Think she has been in as constant use as any other barge during the several seasons since 1864.

Cross-examined.

Quest. How long after the accidents of May 12th and June 19th did the Pat Brady remain in the ship-yard for repairs?

Ans. Think she was in yard at North La Crosse about two weeks after the accident of May 12th, 1865. Three or four days in ship-yard after accident of June 19th.

Quest. When did you next tow her, or see her towed, after accident of June 19th.

Ans. Towed her again on the 6th of August thereafter. I changed from the Keokuk to the Annie Johnson, the latter boat of light draught, and she being a poor tower did not tow much.

54 Quest. Did she not remain in the yard over two weeks after the accident of the 19th June?

Ans. Can't state positively; missed her for about two weeks.

Quest. Do you know how extensive the repairs that were made upon her after that accident?

Ans. I do not.

Quest. Have you towed the Pat Brady the present spring, and if so, with what cargo?

Ans. Towed her light.

Quest. Is she not limited by the insurance companies and shipping company as to amount of cargo she is to carry?

A. I don't know that there is any prohibition?

Quest. Is she in poorer condition or less seaworthy than she was during the season of 1865?

Ans. I don't think she is.

ISAAC H. MOULTON.

Subscribed and sworn to before me this 15th day of May, A. D. 1866.

J. M. MILLER,
U. S. Com'r, Dist. of Wis'n.

Deposition of P. S. Davidson.

P. S. Davidson, witness for respondent, being sworn, deposed and said as follows :

I reside in La Crosse, Wisconsin ; occupation is superintendant of Northwestern Union Transportation Company. This company took effect this 1st of May, by union of the Northwestern Packet Co. and La Crosse and Minnesota Steam Packet Co. Was superintendent of La. C. and Minn. Steam Packet Co. prior to 1st of May, and had been in that business for two years previously. My particular business was a general business for the company. The running part of the company, particularly building and repairing at ship-yard at La Crosse. Been engaged in steamboat business on Miss'i river since 1852—no, since 1849. Been engaged in building and repairing steamboats here for the last 2 or 3 years in that particular branch. Am well acquainted with the structure and building of steamboats and barges navigating the Upper Mississippi. I know barge Pat
55 Brady, and have known her as the Pat Brady since year ago last fall. Knew her previously for four years. Known her since 1862. Was calle the Fort Snelling when I first knew her. I know the circumstances of the accidents occurring to her during the season of 1865. Do not know the dates. She was repaired at the yards at North La Crosse after those accidents. I had charge of the yards. Before the accident of May 12, 1865, she was in good condition. I always considered her as capable and good a barge for carrying wheat as any barge we had of that size. After the first accident she had on one of her quarters, she had a plank shattered—either the knuckle plank or the one above it. The injury appeared as if she had struck something—a log, snag or something. It produced the effect to separate the two parts where she struck, and to start the first plank above the knuckle, as near as I can remember. Had the appearance of having struck something solid. It had the effect of causing her to leak so that they could not keep her up with the pumps. When she came here they had a number of pumps going to keep her afloat. The leak was in this particular place before stated. It caused a bad leak. That injury to a loaded barge, you might keep her afloat with a great many pumps, but we usually lose them. We repaired that place and caulked her after that accident. She was in the yard not over two or three days, I think. After that she went on her same trade again. Capt. Dan. Thayer went after her, and brought her in. He had charge of her at the yard. I know H. S. Durand slightly ; he came to La Crosse the day after she was launched, after repairing. He was acting as agent of the Home Insurance Company. He was at the ship-yard the day after she was launched.

Quest. State what Mr. Durand did and said on that occasion, in relation to the barge Pat Brady, and whether or not he examined said barge.

(Objected to as irrelevant, immaterial and inadmissable.)

56 Ans. Durand came here in the morning, and he talked with me some time in relation to the barge. He went on board

and examined her as far as was practicable. Before he went away I asked if there was anything more he wanted to see about her, to determine whether she was a good barge. He said he was satisfied with what he had seen that she was a good barge. That is all I know in relation to that matter. He said he was satisfied and would pay the loss on her.

Quest. At the time she was launched after this first injury, when Durand saw her, what was her condition as to seaworthiness, being tight, staunch and strong?

Ans. I think her condition good.

Quest. After this time she got aground in June at Prescott, was she again taken to the ship-yard and repaired?

Ans. She was; I don't know how long she was there.

Quest. What injury had she sustained at that time?

Ans. She sprung her top sides; she had the oakum nearly all out of one knuckle by the springing of her top sides. The effect was to let more water in than they could pump out. The top sides are all that is above the knuckle, above the bottom, and from the appearance of the barge when she came to the yard it would seem that the pressure on the side of the boat sprung her and opened her top sides. No other injury apparent that I saw.

Quest. After being repaired at that time, where has the barge been since and in what business?

(Objected to as immaterial.)

Ans. She has been carrying wheat in the same trade, and is now up at the yard. No serious accident has happened her since that time.

Quest. What is the capacity of the Brady, and what is a proper load for her in bulk wheat.

Ans. She has carried about 6,000 bushels; her capacity, as we rate her, is a 5,000 bushel barge.

Quest. Is the navigation of the Upper Mississippi and its tributaries peculiar, so that boats have to be built light, so as to have light draught, and having that object in view, can they be built of
57 heavy timbers, with reference to strength alone, as may be done in deeper waters?

(Objected to by libellant's proctors as being hypothetical, leading and presupposing a state of facts not in conflict with the stage of water and strength of barge adapted to each other, and disposed in fact by the present practice of building barges.)

Ans. We build boats lighter here than they do in deeper waters, and it is not necessary to have the timbers as strong as are used in larger rivers and bigger waters. We have to do business in shallower water than other places, and boats have to be built light to do business with them.

Quest. What is the relative size of the timbers of the Pat Brady as compared with the barges generally in use on the Upper Mississippi and its tributaries, engaged in the same business, of similar capacity.

(Objected to as immaterial and inadmissable.)

Ans. She has heavy timbers as are generally used in barges on the Upper Mississippi. There may be some exceptions.

Cross-examined.

Quest. Is there anything in the peculiar navigation of the Upper Mississippi to prevent the construction and use of barges which will resist the ordinary difficulties of its navigation.

Ans. I don't think there is; not more than other rivers.

Quest. What makes a boat a deep or light draught.

Ans. The breadth of bottom and lightness of timbers makes a light draft.

Quest. What makes a deep draught?

Ans. Different things make a deep draught; heavy timbers and machinery makes deep draught to a steamboat.

Quest. Is there any difficulty in the construction of a barge or steamer for use on the Mississippi, combining both strength and lightness of draught, and if yea, what difficulties, and have you succeeded in constructing them properly for the navigation of the river.

58 Ans. We are constructing them all the time; don't build two just exactly alike; great portion of our barges come from the Ohio river and from St. Louis up; we try to build them to combine both, but whether we hit it or not some one else must judge.

Quest. How long has wheat in bulk been carried on the Upper Mississippi river as a business.

Ans. For 5 or 6 years; I don't know just how long.

Quest. When did it first become a business?

Ans. For 5 or 6 years last.

Quest. Where was the barge Pat Brady built?

Ans. I don't know.

Quest. Where was she brought from?

Ans. Was brought from the Ohio river.

Quest. Was she new when she was brought?

Ans. She had not the appearance of an old barge; was brought in 1862.

Quest. Was she built on order in reference to business on the Upper Mississippi, or how otherwise?

Ans. She was built in reference to the Ohio river business, not the Upper Mississippi.

Quest. After the first accident, so styled, to the Pat Brady, were there any new plank put in her, and how many?

Ans. One. I think.

Quest. Did you see it taken out?

Ans. I saw it after it was out?

Quest. Did you see the old plank before the new plank was put in?

Ans. I did.

Quest. How was it put in?

Ans. We took out the plank that was injured and put new one in. Was not on her all the time, and don't exactly know; she was repainted at that time; I think I showed Mr. Durand the plank that came out, but am not sure.

Quest. What repeirs were made to the Brady after the 2d injury of the 19th June.

Ans. Her knuckles were taken off; she had new knuckles
59 and a portion of new timbers; she was recaulked; she laid on the ways some time; we had not time to work on her and she laid out in the sun.

Quest. Has she wet wheat since?

Ans. Not to my knowledge.

Quest. You were asked what your connection in 1865 was with the La Crosse and Minnesota Steam P'k't Co.; will you answer whether you are interested as owner?

Ans. I own stock in the company, and did at that time.

Re-examined.

Quest. Why was the name of the Brady changed from F't Snelling to Pat Brady?

Ans. The reason was that was built over and made what was equivalent to a new barge of her; that was in 1864.

Cross-examined.

Quest. Who superintended the work on her at this time?

Ans. Dan. Thayer and Philip Winell, I think.

Quest. Did you see what was done with her?

Ans. I was about her every day; I don't know every particular thing that was done on her; she had some new timbers put in, and plank put on her, was repainted and caulked.

Quest. You state she is now in the yard, what is she there for?

Ans. For repairs; she is leaking too much to carry wheat; is making water.

Quest. Has she met with any new misfortunes since June, 1865?

Ans. Nothing of any importance.

Re-examined.

Quest. Are your barges frequently pinched when lying at the dock so as to need repairs?

Ans. They don't all get in the same kind of places, or get the same kind of use; sometimes haul them out frequently, say once a month.

P. S. DAVIDSON.

Subscribed and sworn to before me this 15th May, 1866.

J. M. MILLER,
U. S. Com'r, Wisconsin.

60 *Deposition of Dan Thayer.*

Capt. Dan Thayer, called as a witness on part of respondent, being duly sworn, deposed and said as follows:

I reside at La Crosse; occupation, ship-carpenter; in employ of La Crosse and Minne. Steam P'k't Co. ever since its organization; am

a practical boat-builder; am acquainted with the character of boats, barges and craft employed on the Upper Mississippi; knows barge Pat Brady; known her for last four years; owned by packet co. when I first knew her; I have repaired her, first time, the last of 1864; don't know month; her name was not always Pat Brady; after we repaired her we renamed her; don't know former name; the first time we repaired her we put on new knuckles and took out all defective plank out of her; there were the regular square knuckle on her, the same as all the rest of our barges; her timbers in 1864 were good when we repaired her; we stripped her knuckles and some plank on sides and put in new stern; she was stripped sufficiently to examine the condition of her timbers; they were sound apparently; she was in good condition after she was launched, after these repairs.

Quest. How did she compare with other barges of her size used in the navigation of the Upper Mississippi in strength and seaworthiness.

(Objected to; that question is leading and inadmissable.)

Ans. She compared well, as good as any other barge apparently; she was in good condition in spring of 1865; I knew of accident occurring to her near Minneska in May, 1865; I got her off the sand bank; I took her to ship-yard at North La Crosse when we got her off; we found she had been strained so as to make her sink; this was the first time; her knuckles were sprung; it was two days after she was sunk that I got to her; I could not tell how the injury was caused but the buts were sprung; the buts are where the planks meet end to end.

61 Quest. What would cause the springing of the buts, as these were sprung?

(Objected to as immaterial.)

Ans. Heavy winds would cause it, for one thing; many things would cause it. We took out some of the knuckle plank; they were taken out to examine her, as they were sprung, to see if there was any fault with the barge. Put new ones in, generally, when we take old ones out. Put new ones in this time. When we took her to the yard she leaked badly; could not be kept afloat if loaded. The injuries were in different places. The timbers at that time were good, The springing of buts happen frequently on this river, both on boats and barges. Can't say how long she was on the ways at this time. Recollect this barge getting aground near Prescott in June, 1865. Saw her first near Prescott. I pumped her out and raised her; took wheat out and brought her in. Hauled her out and repaired her when we got her here. The injuries to her then were, one side was shoved in a little so as to open a knuckle. Can't say how that happened. I was here. She was repaired up again. Was not a rotten plank in her at either of these times when I saw her. Has been running on the river between La Crosse and St. Paul, carrying wheat in bulk, ever since. Think I know most all the barges on the upper Mississippi.

Quest. How did this barge, in point of strength, compare with barges generally?

Objected to as immaterial and inadmissable.)

Ans. Good.

Quest. State whether this barge, ever since she was repaired in 1854, has been seaworthy and in suitable condition for carrying wheat in bulk on the river.

(Objected to as leading and improper.)

Ans. Yes, sir.

Quest. Give your reasons for so considering her?

(Same objection as last.)

Ans. Because she is well timbered, well fastened and built. Her strength was good for a barge of her size and heavier timbered than boats of her size.

62 *Cross-examined.*

Got my title of captain by sailing boats on this river during 1857 and since. Been in ship-carpenter business for 18 years; commenced young. Known Pat Brady barge for 4 years.

Quest. How often has she been in ship yard for repairs since you knew her?

Ans. 3 or 4 times; I can't say which; can't state the times; can get papers to show how often. She was in yard once before fall of 1864 for repairs; can't say she was there before that time. She was there after the first accident I have narrated; she was there after the second accident in June; she is now there for repairs. Mr. Winell attended her repairs after 1st accident. I was in the yard at that time; I brought her to the yard.

Quest. Was there no other damage to her at that time but the spring of her buts?

Ans. That's all.

Ques. Was any of her planking broken or cracked at that time?

Ans. There was not; am certain; certain because I see them. Can tell when working on them. There was no hole knocked in her. Planks bore no mark of her coming in contact with anything any more than barges generally. No new scratch on her at that time. Am certain of it because I know it. I examined her closely. Her buts sprung at the 1st accident on the forward end where she tapers off, about 25 feet from the stern, that is the end, the then forward end coming down the river. These barges are shaped alike at both ends. The Brady has her name on the cargo box. The spring of the buts at the 2d accident was amidships. Don't know exactly; think six or eight buts started at that time. These buts started at 1st accident, I think. I am not a stockholder in this packet company. My business is to attend to the repairs. I receive a salary from the company. I don't think she has her name on one of her ends, but am not certain. Name on both sides. The cargo box is the

63 portion extending above the decks.

D. A. THAYER.

Subscribed and sworn to before me this 15th May, A. D. 1866.

J. M. MILLER,

Clerk and U. S. Com'r Dist. of Wisconsin.

Deposition of Philip Winell.

Philip Winell called as witness for respondent, being duly sworn deposed and said:

Reside at North La Crosse; ship carpenter by trade; employed by claimants; been in their employ 4 or 5 years. Am acquainted with the barges, their build and make. Employed on the upper Mississippi. Have known barge Pat Brady for 2 or 3 years; don't know what she was called previously to the time she was called Pat Brady. Been ship carpenter about 26 years. The Brady is like the most of these barges; strong and good as any of them. She is not new, but the next thing to it. She was first in ship yard in 1864. We then put in some new plank, timbers, beams, new decks, caulked her all over. We used oak and Norway pine in her repairs; good quality of timber. Have 40 to 60 men in our employ in shipyard under my direction. The workmanship on this barge was good. Was a well built barge. A few timbers probably were rotten when we repaired her in 1864; whenever we found a rotten one, put a good one alongside of it. In any boat only 2 or 3 years old we may find a defective timber we then put one alongside; leave it stronger, but more heft. After this repair the condition of the Pat Brady was good. She was as seaworthy as any barge of her size, as much so as a new one. She was as good as the best of them in strength; was perfectly tight. She had four pump boxes and two pumps. Barges generally carry two pumps. Workmanship as good and built as good as any barge, and repaired her to the best of my knowledge.

Quest. Do you know of her being injured in May, 1865?

Ans. Yes; I found she was injured when she came to the yard. Her buts were hauled considerably; they were open so as to
64 let the oakum out, but were not sprung off. Her plank were all nut-bolted; bolt goes through plank and timber and is riveted so that they cannot spring off, but the haul apart and let the oakum out. The effect was when the haul apart is to let the oakum out and let the water in. I do not know how badly she leaked. Such an injury would be occasioned by running on to a bar, or a boat jerking her, or a heavy surge from a boat, or from a snag if struck amidships.

Quest. Does such an injury result from a defective boat, in the manufacture, or is it liable to happen to any boat or barge?

(Objected to because it is not evidence and seeking a judicial opinion from witness.)

Ans. Liable to any barge all the world over. In repairing the damage of May 12th, we took out one plank; it was taken out about one streak above her knuckle, because the buts were rather large. Sometimes buts swell a little, and then we remove those defective and put in new ones. Examined several buts and found some open; can't say how many. They were at one end of barge, about 25 feet from one end, and in a space of from 18 to 20 feet. Think she was at yard 4 or 5 days long enough to caulk her. Her condition was then good when she was launched. Don't recollect that she was in-

jured again in June, but she was there again; I think after she got on the bar at Prescott. Then she had some buts open and some of her seams spewed open and let the oakum out. When the water gets into a seam it throws or spews the oakum out. A boat swinging against a barge has a tendency to open the seams and that lets the water in and throws the oakum out. She was then again repaired. She has been running on the river, carrying wheat, since the accident. Think she is between 5 or 6,000 bushel in capacity. She is a good, strong barge. She was as seaworthy in 1865 as she was before that time, after she was repaired.

65 *Cross-examined.*

Quest. Do you know how old she is?

Ans. Think about five or six years; don't know how long she has been in the river; do not know where she was built; don't know for what trade she was built. Have built barges here. The first one I built here was about three years ago; her name was "Rumsey;" her capacity was about 11,000 bushels; could carry 14,000 bushels. She has not been at the yard for repairs. Built next one a month after; name "Dan Thayer;" same capacity; has not been to the yard for repairs. Suppose they have been used as much as any of the barges. Have built here 7 or 8 barges, from 50 to 500 tons burthen. The Pat Brady will carry about 80 tons. At the time the repairs were made after the 1st accident, in 1865, there was no apparent damage but to the seams and buts; no scratch or knock on her to show that she had come in contact with anything. I suppose I would have seen it if there had been; it is my business to look out for such things. I don't know whether it was the same or different ends that was injured on these several occasions. When we repaired her the 2d time in 1865, we put in different knuckles. When she was first she had a round knuckle, and when we had her out the 2d time, in June or July, then we took out all her knuckles on account of her seams being a little bigger than I wanted, and then put in the square knuckle. The reason I did that was to make her carry more, if possible. Her seams were not too large before, but they got wider by caulking. The objection to a wide seam is that the oakum is liable to come out. Has not wet any more wheat since the repairs. Could not tell until we got her out whether she had sprung any more buts.

Re-examined.

Quest. What kind of knuckle is in common use here?

(Objected to as immaterial.)

66 Ans. The round knuckle is in common use. Some men do not know how to put in a round knuckle. Square knuckles will do for smaller barges; but it is only an opinion. The condition of this round knuckle was good enough for maybe 3 or 4 years longer. The round knuckle was as sound as a man could put in. This barge has not been at the yard more frequently than others; more than some, less than others.

Cross-examined.

Have been in the employ of this packet company for about 5 years. Worked before at Erie, Cleveland, Huron, at Peoria and St. Louis. The new barges are about alike the Pat Brady in regard to strength. Have made no effort to build them stronger. Could make them stronger by making them heavier, and that would be useless. These barges are strong enough as they are.

Quest. Do you think they are strong enough when the surging of a boat against them will make them leak?

Ans. A heavy wind or current would set them leaking. A barge of that strength is strong enough, and we make no effort to build them stronger. I generally have the management of the construction of these barges. Their efficiency and seaworthiness in their repair and construction rests upon myself.

Re-examined.

Quest. Are these barges on this river generally sufficient to stand the ordinary perils of navigation without injury?

(Objected to as immaterial and inadmissable.)

Ans. Yes; I think they are. The Brady, in the year 1865, was of that class.

Quest. In your opinion could barges be built suitable and proper for the transaction of the business of the river that would be proof against all extraordinary perils of the navigation of the river?

Ans. No, sir.

Cross-examined.

67 Quest. What do you understand by the term ordinary perils of navigating the upper Mississippi?

Ans. To keep off of snags for one thing; to keep out of woods; keep off sand bars and rocks and avoid heavy winds; that is about all.

Quest. Is it anything extraordinary in the navigation of the river to meet with heavy winds?

Ans. Yes, sir. Depends where you are catched; some places it won't hurt either boat or barge; some places it will.

Quest. Is it anything extraordinary for the barges to get on sand bars?

Ans. No, sir; particularly a year or so ago. It is not extraordinary in a low stage of water.

PH. WINELL.

Subscribed and sworn to before me this 15th day of May, 1866.

J. M. MILLER,
Clerk and U. S. Com'r, Wis.

Deposition of J. T. West.

Capt. J. T. West being called as a witness on the part of the respondents, deposed and said as follows:

I know the circumstances of her, the Pat Brady, sinking near Minneska, in May, 1865. Her wheat was lightened on to the barge Norway. I towed the barge Norway from the Pat Brady down to Winona with a portion of the Brady's cargo in her. I judged there was about 2,000 bushels of wheat in the Norway saved. Don't know what was done with balance.

Quest. What did you do with that portion of the cargo that you towed in the Norway down to Winona?

Ans. A man came on board assuming to be agent of the ins. co. that had the risk on the wheat, and took charge of it. I suppose it was Mr. Durand.

Cross-examined.

There was a portion of the wheat dry; some 1,200 or 1,500 bushels. The rest was wet. Thinks there were 2,000 bushels all together. I don't know accurately how much was dry or how much wet.

Quest. How much was the Pat Brady worth at that time, when you got her up?

(Objected to as immaterial.)

Ans. I estimate her to be worth about three thousand dollars.

68 Quest. What was the freight between Hastings and La Crosse?

(Objected to as immaterial.)

Ans. Don't remember what they were at that time last year.

Quest. What was the steamer Keokuk worth in May, 1865, at the time the P. Brady was sunk and raised?

(Objected to as immaterial.)

Ans. I should estimate her at about $40,000 00.

Quest. What was the Northern Belle and Pat Brady each worth at the time of the 19th of June, 1865?

(Objected to as above.)

Ans. The Northern Belle was then worth about $50,000 00, and the Pat Brady worth $3,000 00.

Re-examined.

Quest. Who was present when this man came on board and took possession of her?

Ans. I remember Charley Miller and Mr. Moore; F. A. Beevy was present.

JUDSON T. WEST.

Subscribed and sworn to before me this 16th May, 1866.

J. M. MILLER,
U. S. Com'r Dist. of Wisconsin.

Deposition of Wm. Rhodes.

William Rhodes called as a witness for respondents, being duly sworn, deposed and said:

Quest. In 1865, were you connected with the La Crosse and Minn'e Steam P'k't Co., and if so, in what capacity?

Ans. Yes; as secretary and treasurer.

Quest. Do you recollect the circumstance of the barge P. Brady being sunk near Minneska in June, 1865?

Ans. Yes; I remember the circumstance.

Quest. Did the packet company expend money and furnish labor, boats and other materials for the purpose of saving the cargo of the Pat Brady after she was sunk? If yea, state the amount and particulars of such service and material, and if reimbursed, how reimbursed.

Objected to as inadmissable and incompetent and not the subject matter of set-off in the action of the Home Ins. Co. against said respondents.)

69 Ans. We expended money and furnished services for that purpose, both boats and materials, and schedule No. 2, hereto annexed, is a correct statement of the money so expended and service rendered, together pith the charge of $308 50, which is a pro rata proportion of the freight earned for the part of the trip performed before the barge was sunk, amounting in all to the sum of $1,318 90. They have not been reimbursed, except as stated by schedule No. 3, hereto annexed.

Quest. What became of the wheat saved from the barge P. Brady at the time she was sunk near Minneska, in May 12th, 1865?

Ans. I don't know what became of it; I know it never came to La Crosse, and that the La Crosse and Minne. Steam Pkt. Co. got none of it, but was informed by Capt. West, of the Northern Belle, that on his arrival at Winona, an agent of the Home Ins. Company, whom he told me was Mr. Durand, told him to leave the wheat saved there, and that he left it in his charge; and I have never received any account of it.

Quest. Do you know of the barge P. Brady getting aground near Prescott, in June 19th, 1865?

Ans. I know the circumstance; did not see her.

Quest. Did the La Crosse and Minne. Steam Pkt. Co expend money and render services in saving the cargo of wheat then on board of barge Pat. Brady, and if yea, to what amount, [and if yea, to what amount,] and state the particulars thereof, and if said company has been reimbursed, state how and in what manner?

(Objected to as inadmissable and incompetent and not the subject-matter of set off.)

Ans. We expended money and furnished services for that purpose, and schedule 3, hereto annexed, is a correct statement of the money so expended, together with the reimbursement by the sale of the wet wheat, and that when the dry wheat was shipped by John Robson's order, we received the disbursements made as therein showed.

Cross-examined.

70 Quest. How could you raise the Pat. Brady without taking the wheat out of her?

Ans. I suppose they could not raise her without taking the wheat out.

Quest. What were the 46 men doing for which board was charged paid C. L. Brown?

Ans. As I understand they were employed taking wheat out of barge Brady, and putting it in barge Norway. I was with the Northern Belle when she towed the Norway up to lighter the Brady. The charge of two dollars for boat was for carrying men to and from the barge to shore. Charge of $3 00 for baskets and pails was for dipping wheat; charge for men in water 86 days was, the men were the water dipping the wheat out of the hold. The charge for rigging was for rigging used and broken up in raising her and securing her. The charge for steamer Favorite, 3 days a $150 per day, was for going there and assisting in raising the barge.

Quest. What service could the steamer Favorite perform in getting the wheat out of the barge?

Ans. I don't know; I sent her on a telegram received, that they needed her—telegram read, "Send the Favorite to Minneska." The Favorite belonged to the La Crosse and Minnesota Steam Packet Co. The bill was rendered to me by the clerk of the Favorite. The bill was as follows: The steamer Keokuk to the steamer Favorite, to 3 days services in raising the barge Brady at Minneska, a $150 per day, $450.

Quest. Upon what basis do you make the charge of $308 50, as pro-rata freight upon the whole cargo, when the whole cargo was not carried to its destination?

Ans. I charged it because I thought we were entitled to it.

Re-examined.

The barge Pat Brady was valued and entered on our stock-book at $1,000 00. Barges vary from one to six thousand dollars; some may be more valuable, according to capacity, build, and condition. I
71 am incompetent to judge of the value of barges.

WM. RHODES.

Subscribed and sworn to before me May 16th, 1866.

J. M. MILLER,
U. S. Com'r, &c.

Winell re-called.

Philip Winell, witness for respondent re-called:

Quest. In case of a steamboat of size of Northern Belle had a loaded barge in tow on each side of her should be driven by a brisk, strong wind, sideways, on to a sandbar, what effect would likely to be produced to the barge on the side that struck the sandbar?

(Objected to as immaterial and inadmissable.)

Ans. If it struck hard enough it would set her leaking by opening her seams, and if one end struck it might open the buts.

Quest. Would that result be likely to follow to a barge in good condition?

(Same objection as above.)

Ans. Would be same result to any barge, new or old.

Cross-examined.

Quest. What would you think of a steam vessel with barges in tow, stopping your engines and letting the wind blow her over on to a sand-bar, or in other words in navigating sideways, with the steam shut off?

Ans. If there was nothing ahead it would be good management, if there was something ahead it would be bad management.

Quest. Would these steamers having double engines working both ways if properly managed—can't they be turned around almost in a circle?

Ans. Sometimes they can, other times they can't; depends how the wind blows.

Quest. What effect does the double engines have on those boats when worked in opposite directions?

Ans. It has the effect of turning them around in circle when going up stream; when coming down stream it has not the same effect.

72 Effect of current takes them down.

Quest. How fast will they turn around, both engines being still?

Ans. Will not turn at all, unless wind takes them around.

Quest. Do you know the Northern Belle?

Ans. Yes, sir.

Quest. With the Northern Belle standing still, or nearly so, heading down stream with engines working in opposite directions with full force, or nearly so, what effect would it have upon her, and how quick would the effect be noticeable?

Ans. It would have the effect of turning her around; would be noticeable in two revolutions.

Quest. Would not the rapidity with which she came around depend upon the rapidity with which the engine was worked?

Ans. Yes.

Quest. Is there any difficulty in working the engines in both directions?

Ans. No difficulty of so working the engines unless they should stop on the centre, but that is an exception that they so work.

Quest. These engines can be worked singly or together, can they not?

Ans. Yes, sir.

Quest. What would be the effect of working the starboad engine and not working the larboard engine?

Ans. She would come around, but not so quick.

Quest. Are there bell ropes in pilot-house to communicate with engineers at the engines?

Ans. Yes, sir; for the purpose of letting the engineer know whether to go ahead, or back, or stop her. There is a bell to back her and one to go ahead. There are bells to each engine, separate. Engineer to each engine.

Quest. How strong a wind would it take to overcome an engine of the Northern Belle, working with 18 revolutions per minute?

73 Ans. What the sailors call a ten-knot breeze and a seven mile current, she would have pretty tough work. In the narrow river she would be ashore on one side of the river, either she or any other boat, unless she was facing it or right before it. A seven-mile current is where the current runs seven miles an hour; find such currents in many places in the river. The current in low water is about the same. In high water the current runs more steady. A ten-knot breeze is a very strong wind, not a gale, but a very strong wind.

Re-examined.

Quest. How long is the steamer Northern Belle?

Ans. Never measured. I think she is about 230 feet.

Quest. What kind of management would it be to go ahead on starboard wheel and back the larboard at full, or nearly full stroke in a channel not over 200 feet wide.

Ans. It might be bad management unless she minded the helm pretty well, for she would go ashore before she would get around. I havv noticed the navigation of barges and of towing them; they run the barges ahead so as to steer the boat better. A barge 130 feet long would be in front about 30 feet. That is, in some boats; depends upon size of boats.

Cross-examined.

Quest. You answer that by working the starboard engine forward, and backing the larboard engine, in channel two hundred feet wide, she would go ashore before she came around; which side would go ashore?

Ans. The larboard side would go ashore first unless you stopped and backed her.

Re-examined.

Quest. If the Northern Belle with two barges in tow was in such a channel as has been described, and having to make a short turn to the larboard with a strong wind on the larboard side, would she be able or likely to make the turn by backing her larboard engine and going ahead with her starboard?

74 Ans. She might make the turn if not too short.

Quest. Would she be in great dangerif the wind was strong, of getting aground in making a short crossing to the larboard, with the wind on the larboard side?

Ans. A boat would be in more or less danger either way; unless

she reversed one engine she might drift down and get on a bar, and sometimes they miss it and run her nose on the bank, and let her swing around.

Cross-examined.

Quest. How do they make the short crossings on the river?

Ans. Go ahead on one engine and back with other, that is the usual and ordinary way of turning.

PH. WINELL.

Subscribed and sworn to before me this May 16th, 1866.

J. M. MILLER,
Clerk and U. S. Com'r, Dist. of Wis.

Capt. Dan. Thayer recalled.

Capt. Dan. Thayer recalled:

Quest. Did you have charge of the wrecking party that was sent to the barge Pat. Brady at the time she was sunk near Minneska in May, 1865?

Ans. Yes, sir; was sent there for that purpose. I had charge of the men and had the certifying of the bills for their payment and the disbursements.

Quest. Did you make return to Mr. Rhodes, sec'y of the company, the actual expenditure made there, and of the service rendered in saving the cargo and raising the barge.

(Objected to as immeterial and in-admissable.)

Ans. Yes, sir.

Quest. Was there any separation made by you of the expenses which were incurred in raising the barge from those incurred in saving the wheat?

(Same objection.)

Ans. No there was not. The bills returned included the whole expenses of service in both.

Quest. Did you have charge of the wrecking party that was sent to relief of barge Pat. Brady at the time she grounded on the
75 bar near Prescott, in June, 1865?

Ans. Yes, sir; had charge of the expenses, and rendered ac. to Mr. Rhodes, the secretary.

Quest. Have you been engaged in the navigation of the river?

Ans. Yes, sir; as captain.

Quest. If the steamer Northern Belle had the P. Brady on the starboard and the Jack Frost on the larboard, coming down the river at the stage of water that existed at the time the P. Brady grounded on the bar at Prescott, and with a strong wind blowing from Lake St. Croix, both barges being loaded, what would be the effect on the Brady on going on to the bar in the manner in which she went on it?

(Objected to as inadmissable and immaterial to exercise the result of mismanagement and negligence.)

Ans. Might have the tendency to sink her if she struck hard enough; have the tendency to spring her buts and open her seams, and sink.

Cross-examined.

Quest. Was the steamer Favorite used, and what did she do about saving the cargo, or any part, and what part of the Brady, after she sunk on or about the 12th May, 1865 ?

Ans. She put some of the wheat on her decks; can't state number of bushels; also put some of the wheat on the deck of the barge; got the Favorite to help raise the Brady and wreck her; the necessity of the steamer was to take the wheat off her and raise her. We use her because she has a steam capstan and can put a good strain on her. The necessity of the steamer was for both purposes, to help get her off, and lighten her. We could have discharged the cargo of the Brady as well on barges as on steamboat, but we needed the men on the boat.

Quest. Capt. do you use one or two engines on your steamer on this river ?

Ans. Use two engines. We use two so as to get better power; less machinery, and gives more deck room. We use the two engines to propel the boat, to make her landings and do her business.

76 They are used to go backward as well as forward, excepting sometimes they catch on the centre; can be both used in different directions at same time, and it is usual so to use them for making landing, keeping out of the woods, turning around, going in opposite directions, and for making short crossings and turns; sometimes we stop one or both in making short crossings. They are used in this way for giving course and navigating the vessel as circumstances may require.

Quest. What effect is produced by stopping the larboard engine and going ahead with the starboard engine ?

Ans. Have effect of turning her to larboard, if in the current will drift down. Pilot gives directions to the engineers, and he handles the wheel; gives directions by the bells, also through a trumpet.

Quest. How usual is it in navigating a vessel from here to St. Paul in low water to change the course of the vessel by changing or reversing the engines ?

Ans. Done on every crossiag between here and St. Paul.

Quest. Why is it done with the engines instead of the pilot wheel ?

Ans. Done with both acting together; the pilot wheel acting in unison with the propelling wheel.

Quest. With the starboard wheel working forward and the pilot wheel hard-a-larboard, how much quicker will the boat come to larboard than if the engines are not working at all ?

Ans. Some quicker, of course, if both are working same way, say about one quarter; that is only an estimation, all depends upon circumstances and situation of boat.

D. A. THAYER.

Subscribed and sworn to before me, May 17th, A. D. 1866.
J. J. MILLER,
U. S. Comm'r, Wis'n.

Exhibit No. 1.—*Protest.*

UNITED STATES OF AMERICA,
Buffalo County, State of Wisconsin:

Be it known by this public instrument of protest, that on
77 the twelfth day of May, in the year one thousand eight hundred and sixty-five, before me, Augustus Finkelnburg, a notary public in and for the said Buffalo county and State, duly commissioned, legally qualified, and acting as such, personally appeared J. H. Master and W. G. Telfer, a clerk on said steamboat Keokuk and barge, and George Nichols, acting pilot of the said boat and barge, all of said steamboat Keokuk, with the appearers, and all and each of whom being by me first duly cautioned and sworn according to law, did under oath make the following statement, to wit: That the said steamboat, with the appearers and the rest of the officers and crew aboard, did on the twelfth day of May, A. D. one thousand eight hundred and sixty-five depart from the port of St. Paul bound on a trip to La Crosse, Wisconsin, laden with a cargo of flour, and did, at the port of Hastings, take in tow the barge "Pat Brady," laden with five thousand bushels of wheat in bulk, the said barge then being tight, staunch and strong, well and duly equipped and officered, and in all respects fit to perform her said intended trip, and that said steamboat and barge proceeded on the trip without accident until eleven o'clock p. m., on the said twelfth day of May, A. D. 1865, when said steamboat and barge, while prosecuting her said trip, and being in her proper place and channel in the Mississippi river, and her officers and crew being in their respective proper places and duties, and when near the head of a place known as Buffalo slough, and near a place known and called Minniecka, the said barge did strike a "snag" in said river, causing said barge to spring a leak, and to cause her to sink within the space of thirty minutes in four feet of water, whereby said wheat laden on said barge, or a portion thereof, became wet and damaged.

Now, therefore, because of the premises, and as all the loss, damage and injury which already has happened, or may hereafter appear to have happened or accrued to said barge and her cargo of wheat, has been occasioned solely by the above mentioned cause, as herein set forth, and cannot be attributed to any insufficiency of the
78 said steamboat or barge, or default or negligence of said master, or any of his crew; and inasmuch as the declaration above referred to is sufficient for the purpose required, he, the said master, now requires me, the said notary, to make his protest and this public act thereof, that the same may be recorded and remain in full force and virtue, as of right shall appertain.

And therefore the said appearers doth protest, and I, said notary, at their special instance, do by these presents publicly and solemnly

protest, against said accident and occurrance for all the losses, costs, damages, and expenses which the said master, owners, freighters or shippers in or on the said steamboat and barge may suffer, so that no part thereof shall be insured by or fall upon him the said master, or any of his crew.

This done and protested at the village of Fountain City, Buffalo county, and State of Wisconsin, and signed and sworn to as aforesaid this thirteenth day of May, in the year one thousand eight hundred and sixty-five.

J. H. MOULTON, *Master.*
W. G. TELFER, *Clerk.*
G. G. NICHOLS, *Pilot.*

A. FINKELNBURG,
Notary Public, State of Wisconsin.

[25-cent stamp.]

Endorsed: Schedule No. 1. J. M. Miller, U. S. comm'r, &c.

Schedule No. 2.

Home Ins. Co. of New York, Mr. Durand, ag't, to P. S. Davidson, Supt. La'x and Minn. S. P'k't Co.:

For labor and expenses paid in raising barge Pat. Brady, ladened with wheat for ac. of John Robson, Winona, and sunk near Minniska, Minnesota, May 12, '65, as follows:

Paid	C. L. Brown 46 days board of men	$69 00
"	J. Smith, for ferryiug	2 00
"	H. S. Temmerman, for baskets and pails	3 00
"	For mens' labor in water 86 days, at $5 per day	430 00
"	Use of rigging	50 00
79 "	Services of steamer Favorite, 3 days, *a* $150 per day	450 00
"	Labor by Favorite	6 40
Pro rata ft. on 5,000 bushels of wheat from Hastings to Minnieska 6 17-100 per bush., on the basis of 10 cts. per bush. on the distance from Hastings to La Crosse, 170 miles		308 50
		$1,318 90

The wheat saved from the above barge was taken in tow by steamer Northern Belle, and while en route for La Crosse, on landing at Winona, Mr. Durand, agt. of the Home Ins., claimed and took possession of the wheat, and disposed of the same at his own option, for which no ac. has been rendered to me, nor any of the above amount paid.

Endorsed: Schedule No. 2. J. M. Miller, U. S. com'r, Wis.

Schedule No. 3.

Home Ins. Co. of New York, Mr. Durand, agt.:

For labor and expenses paid in raising barge Pat. Brady, ladened with wheat for ac. of John Robson, Winona, at Hastings, June 19th, 1865, and sunk near Prescott, Wis., the same day:

For use of Northern Belle and crew 12 hours, at $300 per day	$150 00
For am't paid by D. A. Thayer, expenses	30 50
	180 50
Credit by sales of wet wheat	103 50
	$77 00

Besides the sale of wet wheat, there was saved in good condition 2.495 bushels of wheat which was by order John Robson shipped to Mr. S. Nichols & Co., Chicago, on which we collected our regular tariff rate of freight of 10 cts. per bush. from Hastings to La Crosse. We also collected, as advanced charges, $1,395 90, being balance due us in wrecking the barge Pat Brady in two instances, one of $1,318 90-100, and the other of $77, as per statements rendered.

Endorsed: Schedule No. 3. J. M. Miller, U. S. com'r, &c., Wisconsin.

Hearing.

SEPTEMBER 3, 1866.

This day came the parties by their advocates and this cause came on to be heard upon the pleadings and proofs, and not being concluded the further hearing was adjourned until to-morrow morning.

SEPTEMBER 4, 1866.

This day came the parties by their advocates, and the hearing of this cause was resumed, and not being concluded, it was adjourned until to-morrow morning.

SEPTEMBER 5, 1866.

This day came the parties, by their advocates, and the hearing of this cause was resumed, and not being concluded it was adjourned until Saturday morning next.

Hearing concluded, &c.

SEPTEMBER 8, 1866.

This day came the parties, by their advocates, and the hearing of this cause was concluded, and the court not being sufficiently advised, held the same under consideration.

Decree.

And now at this same term, to wit, September term, 1866, and on the twelfth day thereof, to wit, on the first day of October, A. D. 1866, the following proceedings were had, to wit:

HOME INSURANCE COMPANY
vs.
STEAMBOAT KEOKUK AND BARGE PAT BRADY, the La Crosse and Minnesota Steam Packet Company, claimant. } In admiralty.

This day came the parties, by their advocates, and on consideration of the pleadings and proofs, and the arguments thereon, it is ordered by the court that the steamboat Keokuk, her boiler, engine, machinery, boats, tackle, apparel and furniture, and barge Pat Brady are liable in maritime lien as propounded in the libel, to the
81 amount of five thousand and thirty-four dollars and sixty-nine cents; whereupon it is ordered, adjudged and decreed by the court that the libellant do have and recover of the La Crosse and Minnesota Steam Packet Company, the claimant, and Lewis J. Higby and David Ferguson, its stipulators, the said sum of five thousand and thirty-four dollars and sixty-nine cents, with costs to be taxed, and in default of the payment of this decree and the costs within ten days, that an execution be issued against them for the same.

A. G. MILLER.

Appeal.

And same day (October 1, 1866,) came the respondents in open court, and prayed an appeal to the United States Circuit Court for the district of Wisconsin: Whereupon it is ordered by the court that the said appeal be and is hereby allowed, and that said respondents enter into a bond, with sureties to be approved by the judge, in the penalty of eleven thousand , for a supersedeas within ten days.

OCTOBER 9, 1866.

This day came the La Crosse and Minnesota Steam Packet Company and filed its bond in the penalty of eleven thousand dollars, with Peyton S. Davidson as surety, as follows:

Appeal bond.

Know all men by these presents that we, the La Crosse and Minnesota Steam Packet Company as principal, and Peyton S. Davidson, are held and firmly bound unto the Home Insurance Company in the sum of eleven thousand dollars, lawful money of the United States of America, to be paid to the said Home Insurance Company, its successor or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 6th day of October, A. D., 1866.

Whereas the above bounden La Crosse and Minnesota Steam Packet Company, and Lewis J. Higby and David Ferguson, have appealed to the Circuit Court of the United States for the
82 district of Wisconsin from a decree of the District Court of the United States for said district, bearing date October first, A. D. 1866, in a cause in which the said Home Insurance Company was libellant, and the said La Crosse and Minnesota Steam Packet Company was claimant of the steamboat Keokuk and barge Pat Brady, and respondent:

Now therefore the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal with effect, and pay all such costs, damages, charges and expenses as shall be awarded and decreed against them as such appellants, and answer any decree that may be made, then this obligation be null and void, otherwise of force.

The La Crosse and Minnesota Steam Packet Company, by—

[SEAL.] P. S. DAVIDSON, *Sup't.*

[SEAL.] P. S. DAVIDSON.

Signed, sealed and delivered in presence of—

CYRUS K. LORD.

DISTRICT OF WISCONSIN, *ss*:

P. S. Davidson, being duly sworn, depose and say that they are severally worth the sum of eleven thousand dollars over and above all debts and liabilities, and exemptions allowed by statute.

P. S. DAVIDSON.

Subscribed and sworn to before me this 8th day of October, A. D. 1866.

CYRUS K. LORD,
Court Commissioner U. S. Circuit Court, Dis't of Wisconsin.

OCTOBER 9, 1866.

This bond approved.

A. G. MILLER, *Judge.*

Certificate of Clerk of Dist. Ct.

UNITED STATES OF AMERICA,
District of Wisconsin.

John M. Miller, clerk of the District Court of the United
83 States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the case of Home Insurance Company against the steamboat Keokuk and barge Pat Brady.

In witness whereof I have hereunto set my hand and duly affixed

the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the ninety-first.

[SEAL.] J. M. MILLER, *Clerk.*

[5-cent stamp, cancelled.]

(End of record from District Court.)

And afterwards, to wit, on the 24th day of September, A. D. 1867, the following affidavit was filed on the part of the respondent, to wit:

Circuit Court of the U. S.

Affidavit of Wm. Hull.

HOME INSURANCE COMPANY
vs.
STEAMER KEOKUK AND BARGE PAT BRADY AND La Crosse and Minnesota Steam Packet Company, claimant. } On appeal.

JOHN ROBSON
vs.
STEAMER NORTHERN BELLE AND BARGE PAT Brady and La Crosse and Minnesota Steam Packet Company. } On appeal.

DISTRICT OF WISCONSIN, *ss*:

William Hull, being duly sworn, deposes and says, that he is the general attorney and agent in all legal matters of the La
84 Crosse and Minnesota Steam Packet Company, and that he had charge of looking up the testimony for said company; that, by an arrangement between the parties, the respective counsel of the parties attended at La Crosse and Winona, on the Mississippi river, and took all the testimony relative to the navigation and sea-worthiness of said barges, excepting the testimony of Jasper Humphreys and P. M. Davidson, which was taken at Milwaukee, on the part of the libellant, after the other testimony had been taken, and just before the hearing of said causes; that said two witnesses testified, among other things, that said barges were not sea-worthy, because they were built without natural knees; that said question was not raised until said last two witnesses were examined; and that after said examination was had this deponent was unable to furnish testimony to rebut said testimony, but that in truth and in fact no barges or steamboats, used on the Upper Mississippi, are built with natural knees, but are all built in this respect as the barges of said claimant are built; that the said claimant has testimony here to show that fact, and believe that these causes cannot be properly tried without the admission of said evidence.

WILLIAM HULL.

Subscribed and sworn to before me this 24th day of Sept., 1867.
EDWARD KURTZ, *Clerk.*

And the said deponent further says that the reason why said testimony was not taken was, because this deponent supposed that an order of the Circuit Court was necessary to enable the claimant to take additional testimony; and that, on inquiry of the district judge by this claimant's counsel, he understood from him that such order was necessary before said testimony could be taken.
WILLIAM HULL.

Subscribed and sworn to before me, Sept. 24th, 1867.
EDWARD KURTZ, *Clerk.*

And now, at this same term, to wit, September term, A. D. 1867, and on the 14th day thereof, to wit, on the 24th day of September, A. D. 1867, the following proceedings were had, to wit:

85 *Hearing in Circuit Court.*

HOME INSURANCE COMPANY
vs.
THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, the La Crosse and Minn. Steam Packet Company, claimant. } Appeal in admiralty.

This day came the parties by their counsel, Messrs. Emmons & Van Dyke appearing for the libellant, and Messrs. Arrington and Cary for the respondents, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and the hearing being concluded the same was held under advisement.

And afterwards, to wit, on the 21st day of the said term, to wit, on the 25th day of November, A. D. 1867, the following proceedings were had, to wit:

Decree of affirmance.

HOME INSURANCE COMPANY
vs.
THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, the La Crosse and Minnesota Steam Packet Company, claimant. } In admiralty appeal.

The court, having considered and being now fully advised upon the matters heretofore submitted herein, affirms the decree of the District Court; and it appearing from the record that a decree was rendered in the District Court, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-six, in favor of the libellant for the sum of five thousand and thirty-four dollars and sixty-nine cents damages, together with costs—

It is thereupon ordered, adjudged and decreed by the court, that the respondents pay to the libellant the said sum of five thousand and thirty-four dollars and sixty-nine cents, the amount of the
86 decree aforesaid, together with four hundred and six dollars and twenty-nine cents, the interest on said decree from the first day of October, in the year of our Lord one thousand eight hundred and sixty-six, amounting in all to the sum of five thousand four hundred and forty dollars and ninety-eight cents, together with the costs herein to be taxed, and also the costs decreed in the District Court, within ten days from this date; and that in default thereof the libellant have execution therefor against the said claimant, the La Crosse and Minnesota Steam Packet Company, and also against Lewis J. Higby and David Ferguson, the stipulators of the said claimant.

D. DAVIS.

And afterwards, to wit, on the 22nd day of said term, to wit, on the second day of December, A. D. 1867, the following proceedings were had, to wit:

Appeal.

HOME INSURANCE COMPANY *vs.* THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, the La Crosse and Minnesota Steam Packet Company, claimant.	Appeal in admiralty.

This day came the La Crosse and Minnesota Steam Packet Company, claimant, and Lewis J. Higby and David Ferguson, stipulators, by their counsel, Mr. Cary, and prayed an appeal to the Supreme Court of the United States, with an order for supersedeas, as follows:

Circuit Court of the United States for the District of Wisconsin.

STEAMBOAT KEOKUK AND BARGE PAT BRADY, La Crosse and Minnesota Steam Packet Company, claimant and respondent, and Lewis J. Higby and David Ferguson, stipulators of said claimant, *adv.* HOME INSURANCE COMPANY, libellant.	

The above-named respondent and stipulators, conceiving
87 themselves aggrieved by the final sentence or decree entered on the 25th day of November, A. D. 1867, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

JOHN W. CARY,
Proctor for Respondent and Stipulators.

Appeal allowed.

Whereupon it is ordered by the court that an appeal be and is allowed, and that a bond for supersedeas, to be approved by the court or a judge thereof, be given, with sureties, in the penalty of ten thousand dollars.

DECEMBER 4, 1867.

Bond for supersedeas filed as follows:

Circuit Court of the United States for the District of Wisconsin.

Appeal bond.

STEAMBOAT KEOKUK AND BARGE "PAT BRADY," La Crosse and Minnesa Steam Packet Company, claimant, and Lewis J. Higby and David Ferguson, stipulators of said claimant, appellants, *v.* HOME INSURANCE COMPANY, libellant and appellee.	In admiralty.

Know all men by these presents, that we, William F. Davidson, of St. Paul, Minnesota, and S. S. Merrill, of Milwaukee, Wisconsin, are held and firmly bound unto the above-named Home Insurance Company in the sum of ten thousand dollars, to be paid to the said appellee; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fourth day of December,
88 in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States for the district of Wisconsin:

Now therefore the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] WM. F. DAVIDSON.
[SEAL.] S. S. MERRILL.

Sealed and delivered, and taken and acknowledged, this fourth day of December, A. D. 1867, before me.

EDWARD KURTZ, *Clerk.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

William F. Davidson and S. S. Merrill, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

WM. F. DAVIDSON.
S. S. MERRILL.

Sworn to before me this 4th day of December, 1867.

EDWARD KURTZ, *Clerk.*

Endorsed: Dec. 4, 1867. This bond approved as a supersedeas. A. G. Miller, district judge. Filed December 4, 1867; and citation issued.

89 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Home Ins. Co. against steamboat Keokuk and barge Pat Brady

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL.] EDWARD KURTZ, *Clerk.*

90 THE UNITED STATES OF AMERICA:

To the Home Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal in the Circuit Court of the United States of Americafor the district of Wisconsin, wherein the Steamboat Keokuk and Barge Pat Brady, the La Crosse and Minnesota Steam Packet Company claimant and respondent, Lewis J. Higby and David Ferguson, stipulators of said claimant, are appellants, and you are appellee, to show cause, if any there be, why the decree passed against the said the La Crosse and Minnesota Steam Packet Company, Lewis J. Higby and David Ferguson, should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December,

in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL.] A. G. MILLER,
District Judge.

We hereby admit service of the foregoing citation.
December 12th, 1867.

EMMONS & VAN DYKE,
Libellants' Proctors.

SUPREME COURT

OF THE

UNITED STATES.

DECEMBER TERM, 1869.

No. 139.

THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, The La Crosse & Minnesota Steam Packet Company, Claimant and Respondent, and Lewis J. Higby and David Ferguson, Stipulators of said Claimant, *Appellants*,

vs.

HOME INSURANCE COMPANY, *Appellee.*

BRIEF FOR APPELLANTS

JOHN W. CARY, *Counsel.*

Starrs' Print, Milwaukee.

SUPREME COURT

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THE STEAMBOAT KEOKUK AND BARGE PAT. BRADY, The La Crosse & Minnesota Packet Company, Claimant and Respondent, and Lewis J. Higby and David Ferguson, Stipulators of said Claimant, *Appellants*,

vs.

HOME INSURANCE COMPANY, *Appelle*.

This suit was brought to recover for the loss of a cargo of wheat shipped in bulk on board the barge Pat. Braddy, on the 12th of May, 1865, at Hastings, in the State of Minnesota, and taken in tow by the steamer Keokuk, designed on a voyage upon the Mississippi River to La Crosse, in the State of Wisconsin. The libel charges, that by reason of the unseaworthiness of the barge, its decayed condition, and its utter deficiency to carry safely wheat in bulk, and by reason of the unskillfulness, mismanagement and carelessness of the Master, and the neglect of his mariners and servants under him, said barge was sunk in the Mississippi River, and its cargo wholly lost. The answer negatives these charges in the libel, and alleges that the steamboat and barge were seaworthy, in good repair and condition, properly manned and equipped, and were skillfully, carefully and properly navigated and managed, and that the barge was tight, staunch and strong, and in all respects fit to perform her intended trip : *that the barge struck a hidden, concealed and an uuknown snag in said River, causing her to spring a leak, and sink within the space*

of thirty minutes, in four feet of water in said River whereby the cargo was wet and damaged, and that the respondent used every exertion in its power to raise and save said wheat, and preserve it from loss and destruction.

The bill of lading for this cargo was in the ordinary form, and contained the following exception "(*the unavoidable dangers of river and fire only excepted.*)"

POINT I.

THE LOSS WAS WITHIN THE EXCEPTION NAMED IN THE BILL OF LADING, TO WIT: THE UNAVOIDABLE DANGERS OF THE RIVER.

The testimony clearly shows that the sinking of the barge was caused by her striking a hidden and unknown obstruction in the river, and upon this point there is no conflict of testimony.

James Godding, (whose deposition is found at page 30 of Transcript), testifies, that he was on watch when injury happened; was sitting on deck of barge. *She struck her starboard quarter on something solid.* Five minutes before she struck he had examined her and there was no water in her; had towed a hundred miles from Hastings and she had made no water. Put five pumps on her and called all hands and put them to work. When she struck, there was no bar to run her on, and kept on to Minneska, about two miles, where we run her on a bar. When I told master, he partially stopped; went on slowly; about 7 or 8 miles per hour. Were on starboard side of channel; not a great way from where we usually run. It was rather a dark night; no moon; a usual night without a moon. In the night, following the channel, facing the high head-lands covered with evergreens, a long shade sets back on the river, and it is difficult for the best pilot to tell the channel closely there.

I, H. Moulton, captain of boat, testifies, (Trans. p. 33) that the watchman on Brady reported every few minutes that she was dry and in good order: that about eleven o'clock in the evening, when they were in what is called Good River he went into the cabin and had been there but a few minutes when the watchman came in and told him that the barge had struck something and was making water—

went out and found she was making water rapidly. Two deck hands who were sitting on deck of barge said they felt her strike something very seriously. His testimony also shows that after the accident everything possible was done to save cargo.

P. S. Davidson, superintendent of Company, testifies (Trans. p. 38,) that he had charge of the yard of LaCrosse, where the Brady was repaired. *She had a plank shattered—either the knuckle plank or the one above it. The injury appeared as if she had struck something—a log, snag or something. It produced the effect to seperate the two parts where she struck, and to start the first plank above knuckle. Had the appearance of having struck something solid,*

Phillip Winell testifies, (Trans. p. 44.) that he repaired Brady after accident—that her butts were sprung so as to let the oakum out. Such an injury would be occasioned by running on to a bar, or a heavy surge if struck amidships.

There is no testimony in the case which disputes the foregoing, or in any way conflicts with it. The question then is, does it show a case within the exception in the bill of lading. We insist that it does. That the barge struck something solid, unknown and unseen. when she was in what is called Good River, and not a great way from where they usually run is conclusively proven. That the accident happenod suddenly and probably from striking something solid appears from the fact that the watchman on the barge, five minutes before had examined the barge and found no water, and immediately after the accident he made an examination and found she was making water rapidly.

An unavoidable danger or peril is one that cannot be guarded against or overcome by the ordinary exercise of human skill and prudence. This accident could possibly have been prevented had every foot of the river been sounded, examined and found to be clear in advance of the progress of the steamboat and barge, but this would have been an extraordinary exercise of human skill and prudence, more than is required of the carrier, in order to bring himself within the exception of the bill of lading. The perils and dangers of river navigation are peculiar to those waters, and differ materially in their nature from the dangers of navigation on the lakes or high seas ; what would be a danger of navigation in one water would not be in another.

The navigation of our rivers, and especially of the Mississippi, has constantly to contend with different stages of water, changing channels, shifting sand-bars and floating snages. The river pilot who finds his pathway clear to-day, in retracing his steps to-morrow, may be grounded or snagged, and thereby wrecked. Because of these peculiarities in river navigation we claim that the Courts should give a liberal construction in behalf of carriers on such waters, in reference to what shall be considered perils of navigation. This was one of the first cases arising on the river ever tried by His Honor the District Judge, and from reading his opinion it is evident that he brought to bear the same tests to determine what was a peril of river navigation that he would a peril of navigation on the lakes, cases arising on which he had been familiar with for years. In our humble judgment he erred in doing this, because the navigation of the two waters is so different. It was urged by counsel, and sanctioned by the District Judge, that the speed of the boat at the time of the accident, to wit: 12 miles per hour, was a sufficient answer to respondent's claim that the accident was unavoidable. It nowhere appears in the evidence that this speed was not consonant with the safe and proper navigation of the river at this point, and the Court in the absence of proof cannot take judicial notice that the speed of the boat contributed to the injury, or that had the boat been running at a less rate of speed, the injury would not have happened.

2. The accident was not attributable to any inherent defect in the barge, for she was sea-worthy. The testimony on this point is conclusive.

James Godding certifies (Trans. p. 30): was acquainted with barge Pat. Brady in 1864 and 1865; we towed her most constantly in 1864; had towed her previously to May 12, 1865; we were carrying wheat in her in bulk; had always preferred her on trips, requiring less pumping than many others. I considered her a staunch barge. She would carry 5,000 to 5,500 bushels; think she has been loaded to amount of 6,000 bushels; I have loaded her a good many times.

I, H. Moulton, captain of boat, testifies (Trans. pp. 33 to 37): I was acquainted, prior and subsequent to 12th of May, with barge Pat. Brady, and have towed her since. I considered her staunch

and strong, and every way capable to perform that trip at that time. I think the cargo was suitable to her capacity; was not over loaded; has carried same amount many times.

P. S. Davidson, Superintendent of Claimant Company, and who had charge of Company's Ship Yard at La Crosse, testifies (Trans. p. 38): that barge Pat. Brady, before accident of May 12, 1865, was in good condition. I always considered her as capable and good a barge for carrying wheat as any barge we had of that size. He also testifies that Durand, the agent of libellant, examined the barge and admitted that she was a good barge; that they build boats lighter on the Upper Mississippi than they do in deeper waters, and it is not necessary to have the timbers as strong as are used in larger rivers and bigger waters. We have to do business in shallower water than other places, and boats have to be built light to do business with them.

Dan. Thayer, a ship carpenter, and who had charge of claimant's ship yard, testifies (Trans. p. 48): that he repaired and built over the barge Pat. Brady the latter part of 1864. Her timbers in 1864 were good; she was stripped sufficiently to examine the condition of her timbers; they were sound, apparently; she was in good condition after she was launched after these repairs; she was in good condition in Spring 1865; that ever since she was repaired in 1864 she had been sea-worthy and in suitable condition for carrying wheat in bulk on the river.

Her strength was good for a barge of her size, and heavier timbered than boats of her size. Had known barge Brady for four years.

Phillip Winell testifies, (Trans. p. 44,) that he had been a ship carpenter for 26 years. Had been in claimants ship yead four or five years. Had known barge Pat. Brady two or three years. Brady was like the most of these barges; strong and good as any of them. She was not new, but next thing to it. Was first in ship yard in 1864. We then put in some new planks, timbers, beams, new decks; caulked her all over. Was a well built barge; a few timbers probably were rotten when we repaired her in 1864. Whenever we found a rotten one, put a good one alongside of it. These timbers alongside leave it stronger, but more heft. After this repair the condition of the Brady was good. She was as seaworthy as any

barge of her size, as much so as a new one. She was as good as the best of them in strength, was perfectly tight. He generally had the management of the repair and construction of barges. The new barges built were about like the Brady in strength.

Hugh B. Callahan and D. D. Poleys, two witnesses produced by libellants, testified that they examined the Brady when she was in the yard at LaCrosse, in June 1865; that they found some of her timbers decayed and rotten; they were carpenters but never had any experience in ship building.

C. L. Rider, a witness for libellants, testified, that he was employed by Home Insurance Company, to inspect and classify barges; that he inspected the Brady in the Spring of 1865, and classed her No. 2, suitable to carry oats and barley.

Jasper Humphrey of Milwaukee, a marine inspector on the lakes, and Thomas Davidson of Milwaukee, a ship builder on the lakes, were also produced by libellants, and testified, that in June, 1865 they went to LaCrosse and examined the Brady, and thought that she was weak from her decayed condition and original construction. They had never had any experience in building crafts for river navigation, or in navigating the river. River crafts, and especially those on the Upper Mississippi where the water during a great portion of the season is shallow, must be of light draught, and consequently cannot possess the strength that lake crafts do, where strength of build is the main consideration.

We therefore submit that the testimony shows conclusively that the barge was seaworthy and in good condition at the time of this accident.

JOHN W. CARY,
Appellant's Attorney.

Supreme Court of the United States.

THE STEAMBOAT KEOKUK AND BARGE PAT BRADY, THE LA CROSSE & MINNESOTA STEAM PACKET COMPANY, Claimant and Respondent, and LEWIS J. HIGBY AND DAVID FERGUSON, STIPULATORS OF SAID CLAIMANT, Appellants,

vs.

HOME INSURANCE COMPANY,

Appellee.

BRIEF FOR APPELLEE.

N. J. EMMONS,

Counsel for Appellee.

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Appellee.

BRIEF FOR APPELLEE.

The libel in this case was filed for a breach of contract of affreighment, evidenced by the ordinary bill of lading. (*Trans. p.* 3.

To comprehend fully the tenor and meaning of the bill, it only needs be stated, that the carriage on the Upper Mississippi, especially of wheat and other cereals in bulk, is done principally in barges towed by the steamers. These barges become appurtenant to, and form part of the carrying capacity of the steamers.

The District Court decreed for the libellant, which was affirmed by the Circuit Court.

The opinion of the District Judge was as follows:

MILLER, Judge.

"The contract of affreightment in this case, was for the transportation of wheat in bulk in the barge Pat Brady, towed by the steamboat Keokuk, from Hastings, in the State of Minnesota, to La Crosse, in this state, on the Mississippi river, to be delivered in good order, *the unavoidable dangers of river and fire only excepted.* It is propounded in the libel, that by reason of the unseaworthiness of the boat and barge, and of the decayed condition of the barge, and its utter inefficiency to carry safely wheat in bulk; and by reason of the unskilfullness and mismanagement and carelessness of the master, and the neglect of his mariners and servants, the barge was sunk in the river, the wheat was wetted and damaged, and wholly lost.

Libellant having issued a policy of insurance on the wheat, was compelled to compensate the shipper for the loss. It is alleged in the libel, and confessed in the answer, that the boat and barge belonged to, and was in the employ of, claimant.

It is pleaded in the answer, after denying the above allegations as to the causes of the loss, that, on the 12th day of May, 1865, the steamboat departed from St. Paul with a cargo of flour, and at Hastings took in tow the barge, laden with five thousand bushels of wheat in bulk. The barge was tight, staunch and strong, and was well and duly equipped and officered, and in all respects fit to perform the trip, and was seaworthy, and was in good repair and condition. And about eleven o'clock in the evening of said day, in proceeding on her voyage and in her proper place and channel, at Buffalo Slough, near Wineska, the barge struck a hidden, concealed and unknown snag in the river, causing her to spring a leak and sink within the space of thirty minutes, in four feet of water, and the wheat, or a great portion of it, was damaged. The wheat was delivered up to the agent of the Insurance Company.

The objection to this libel, brought by the Insurance Company, and not by the shipper, John Robson, is not tenable. Libels may be brought either in the name of the shipper, or by the Insurance Company having paid the loss, or accepted an abandonment. Under rule 34 in Admiralty, the underwriter who has accepted an abandonment, which divests the original claimants of all interest, may be admitted to intervene and become the *dominis litis* in a suit *in rem*. The Brig Ann C. Pratt, 1 Curtis Rep. 340; The Propeller Monticello v. Moilison, 17 Howard, 152, 155, 156. And by rule 43 of Admiralty, the Insurance Company could come into Court by petition, for the avails or proceeds of a decree in favor of the shipper, if the libel had been brought by him in his own name.

It is urged that the strict rule as to the liability of common carriers, should not be applied to those on the Mississippi river, on account of the risks and expenses of navigation. The only answer required is, that the law make no distinction between common carriers on water, as to their liability. They are entrusted with the property of others for a compensation; and for the security of property, they are considered in the light of insurers. It is allowable to carriers exposed to unusual risks and expenses, to charge accordingly. From the bills of lading exhibited in these suits, it is probable that the officers of the Packet Company understood this principle.

The alleged cause of the sinking of the barge, is that she struck a hidden, concealed and unknown snag. The proof must show satisfactorily that the alleged cause of the accident was *unavoidable*. It is the claimant's business to establish with reasonable certainty, that it was caused by an unavoidable danger of the river. The exception in the bill of lading was inserted for the carrier's protection, and is to be established by claimant. Where a loss or damage is shown, it is incumbent upon the carrier to bring it within the excepted peril, in order to discharge himself from responsibility. It is not sufficient, without more, to show that the vessel was stranded,

to bring the goods within the exception in the bill of lading. King v. Shepard, 3 Story's Rep. 349; Abbott on Shipping, 478. And after the damage is established, the burden lies upon the respondents to show that it was occasioned by one of the perils, from which they are exempted in the contract of shipment or bill of lading. Clark v. Bonnell, 12 Howard, 272; Rich v. Lambert, 12 id. 347; Chitty on Carriers, 242; Story on Bailments, §§ 528, 529; 3 Kent's Com., 213; 1 Smith's Leading Cases, 313; Choteaux v. Leach, 18 Penn. Rep., 233; Fland. on Shipping, § 257; Marvin on Wreck. and Sal. 21; Parson's Mar. Law, 348; Smith's Mar. Law, 386.

I will examine the testimony to ascertain if the defence is brought within the principles of law.

The captain of the boat testified, that about eleven o'clock in the night, in what is considered good river, the watchman came and told him that the barge had struck something and was making water. The water gained against all pumps and all work. The superintendent of the company testified, that after the accident, the barge had a plank shattered, either the knuckle plank, or the one above it. The injury appeared as if the barge had struck a log, or snag, or something. Had the appearance of having struck something solid. The ship carpenter in the employ of the company testified that he examined the barge and found she was strained so as to make her sink; knuckles were sprung. He got the barge off, and brought her to the shipyard. Cannot tell how the injury occurred. Her butts were sprung. Many things would cause the injury. We took out some of the knuckle plank and put new ones in, generally where we took old ones out. The injuries were in different places. The workman on the repairs testified, the butts of the barge were parted considerably; were opened so as to let the oakum out, but were not sprung off. Such an injury would be occasioned by running on a bar or by a heavy surge from a boat, or from a snag, if struck

amidships. In repairing, we took out one plank, about one streak above the knuckle, because the butts were rather large. Sometimes butts swell a little, and then we remove the defective ones and put in new ones. Examined butts and found some open, cannot tell how many.

James Gording testified, that he was on the barge at the time of the accident. She was on the starboard side of the boat, and the barge Jack Frost on the larboard side. She struck on her starboard quarter, on something solid. Five minutes before she struck had no water in her. She had made no water from Hastings. When the captain was told she had struck, he partially stopped a minute, and then went on slowly, about half speed—seven or eight miles an hour. The boat mostly runs thirteen or fourteen miles an hour. It was rather a dark night, no moon; a usual night without a moon. At the time of the accident, were going about twelve miles an hour. In the night, following the channel, and facing the high headlands covered with evergreens, a heavy shade sets back on the water, and it is difficult for the best pilot to tell the channel closely there. The barge struck on starboard side; we were on one side of the channel.

I will not pursue this examination any further. The superintendent testified that a plank was broken; but neither the ship carpenter in the employ of the company, nor the man who did the repairs, testify to even a scratch on the planking of the barge. There is not a particle of testimony to sustain the allegation in the answer, that the barge unavoidably struck a concealed and unknown snag; or any reliable proof that she struck a snag at all. The captain did not stop to investigate the cause of the accident, but the boat proceeded on her course at the rate of seven or eight miles an hour.

The testimony of the last witness clearly puts the boat in fault. She was towing two loaded barges, in addition to her own cargo, and was running in the night, and in the shade of the surrounding timber, trees and evergreens, at the rate of

twelve miles an hour, and to the starboard side of the channel. The claimant has in no manner brought itself within the exception of the bill of lading. There is no unavoidable danger of the river proven. And it is probable, if a snag had been discovered to have caused the accident, that the position and speed of the boat at the time, would prevent claimant from successfully setting up the plea of unavoidable danger of the river. It seems that the officers of claimant's boats are more intent upon speed than safety. Testimony in respect to the seaworthiness of the barge will be examined in another case.

Decree for Libellant."

His Honor, the Circuit Judge, in an oral opinion, sanctioned the conclusions of fact and law.

The District Judge, remarks in his opinion, that "Testimony in respect to the seaworthiness of the barge will be examined in another case." The case to which he refers is here on appeal, and is number of the present term. These two cases were heard together below, both in the District and Circuit Courts.

POINTS.

The respondent, as a common carrier, having failed to bring itself within either of the exceptions contained in the bill of lading, is liable for the loss of the cargo of the barge. No authorities are necessary in support of such familiar proposisition.

2d. The facts upon which the case depends, are found against respondent—both courts below concurring in such finding. This court will not reverse, unless manifest error or mistake is pointed out and made clearly to appear.

The Grace Girdler, 7 Wall., 204, and cases cited in note.*

N. J. EMMONS,
Counsel for Appellee.

Stretcher Officers Bay
Aboard quarter
Blue Watch Starboard
Boat